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17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE NORTHERN DISTRICT OF CALIFORNIA
19 SAN JOSE DIVISION

20 JESSE M. PLAZA,

21 Petitioner,

22 v.

23 BEN CURRY, Warden,

24 Respondent.

25 C08-1589 JF

26 **ANSWER TO PETITION FOR
WRIT OF HABEAS CORPUS;
MEMORANDUM OF POINTS
AND AUTHORITIES**

27 Judge: The Honorable
28 Jeremy Fogel

As an Answer to the Petition for Writ of Habeas Corpus filed by inmate Jesse M. Plaza,
Respondent, admits, alleges, and denies that:

1. Plaza is in the lawful custody of the California Department of Corrections and Rehabilitation following his 1991 conviction for first degree murder. (Pet. at i.) Plaza is serving a sentence of twenty-five years to life in prison. (*Id.*)

2. In 2007, Plaza filed a petition for writ of habeas corpus in Los Angeles County Superior Court, alleging that the Board of Parole Hearings' 2006 decision denying him parole violated his due process rights. (Ex. A, Super. Ct. Pet.; Ex. B, Super. Ct. Order.) Plaza also alleged that the Board applied the statutory parole criteria in an arbitrary and capricious manner,

1 and that he has a reasonable expectation of release based on Penal Code section 3041,
 2 subdivision (a). The superior court denied the petition, finding that there was some evidence to
 3 support the Board's finding that Plaza's offense was carried out in a calculated and dispassionate
 4 manner, and that the motive for the crime was trivial in relation to the offense. (Ex. B at 1-2.)

5 3. Plaza then raised the same claims in petitions to the California Court of Appeal and the
 6 California Supreme Court. (Ex. C, Ct. App. Pet.; Ex. D, Ct. App. Order; Ex. E, Sup. Ct. Pet; Ex.
 7 F, Sup. Ct. Order.) Both petitions were summarily denied. (Ex. D; Ex. F.)

8 4. Respondent admits that Plaza exhausted his state court remedies regarding his claims
 9 that the Board's 2006 decision violated his due process rights, that the Board applied the
 10 statutory parole criteria in an arbitrary and capricious manner, and that he has a reasonable
 11 expectation of release based on Penal Code section 3041, subdivision (a). Respondent denies
 12 that Plaza exhausted his state court remedies regarding his claim that the Board violated his right
 13 to equal protection. 28 U.S.C. § 2254(b)(1)(A); *see O'Sullivan v. Boerckel*, 526 U.S. 838, 844
 14 (1999) (a state inmate must properly exhaust available state court remedies before a federal court
 15 may consider granting habeas corpus relief). Respondent denies that Plaza has exhausted his
 16 claims to the extent they are interpreted more broadly to encompass any systematic issues beyond
 17 this claim.

18 5. Respondent admits that the Petition is timely under 28 U.S.C. § 2244(d)(1).
 19 Respondent admits that the Petition is not subject to any other procedural bar.

20 6. Respondent denies that Plaza is entitled to federal habeas relief under 28 U.S.C. § 2254
 21 because the state court decisions were not contrary to, or an unreasonable application of clearly
 22 established federal law as determined by the United States Supreme Court, or based on an
 23 unreasonable determination of the facts.

24 7. Respondent denies that Plaza has a federally protected liberty interest in parole and,
 25 therefore, alleges that he has not stated a federal question invoking this court's jurisdiction.
 26 The Supreme Court has not clarified the methodology for determining whether a state has created
 27 a federally protected liberty interest in parole. *See Greenholtz v. Inmates of Neb. Penal & Corr.*
 28 *Complex*, 442 U.S. 1, 12 (1979) (liberty interest in conditional parole release date created by

1 unique structure and language of state parole statute); *Sandin v. Connor*, 515 U.S. 472, 484
 2 (1995) (federal liberty interest in correctional setting created only when issue creates an “atypical
 3 or significant hardship” compared with ordinary prison life); *Wilkinson v. Austin*, 545 U.S. 209,
 4 229 (2005) (*Sandin* abrogated *Greenholtz*’s methodology for establishing the liberty interest).
 5 California’s parole statute does not contain mandatory language giving rise to a protected liberty
 6 interest in parole under the mandatory-language approach announced in *Greenholtz*. *In re
 7 Dannenberg*, 34 Cal. 4th 1061, 1087 (2005) (California’s parole scheme is a two-step process
 8 that does not impose a mandatory duty to grant life inmates parole before a suitability finding).
 9 And continued confinement under an indeterminate life sentence does not impose an “atypical or
 10 significant hardship” under *Sandin* since a parole denial does not alter an inmate’s sentence,
 11 impose a new condition of confinement, or otherwise restrict his liberty while he serves his
 12 sentence. Thus, Respondent asserts that Plaza does not have a federal liberty interest in parole
 13 under either *Greenholtz* or *Sandin*. Respondent acknowledges that in *Sass v. California Board of
 14 Prison Terms*, 461 F.3d 1123, 1128 (9th Cir. 2006) the Ninth Circuit held that California’s parole
 15 statute creates a federal liberty interest in parole under the mandatory-language analysis of
 16 *Greenholtz*, but preserves the argument, which is pending en banc in *Hayward v. Marshall*, 527
 17 F.3d 797 (9th Cir. 2008).

18 8. Even if Plaza has a federal liberty interest in parole, he received all due process to
 19 which he is entitled under clearly established federal law because he was provided with an
 20 opportunity to be heard and a statement of reasons for the Board’s decision. *Greenholtz*, 442
 21 U.S. at 16.

22 9. Respondent denies that the some-evidence test is clearly established federal law in the
 23 parole context. Respondent denies that the preponderance of the evidence standard is required by
 24 state law or that it is clearly established federal law in the parole context.

25 10. Respondent denies that the Board applied the statutory parole criteria in an arbitrary
 26 and capricious manner or that Plaza has a reasonable expectation of release based on Penal Code
 27 section 3041, subdivision (a). Respondent alleges that Plaza fails to present a federal question
 28 when he contends that the state courts improperly applied or interpreted state law. Alleged errors

1 in the application of state law are not cognizable in federal habeas corpus. *Pulley v. Harris*, 465
2 U.S. 37, 41 (1984); *Langford v. Day*, 110 F.3d 1380, 1389 (9th Cir. 1984).

3 11. Respondent submits that an evidentiary hearing is not necessary because the claims
4 can be resolved on the existing state court record. *Baja v. Ducharme*, 187 F.3d 1075, 1078 (9th
5 Cir. 1999).

6 12. Respondent denies that Plaza is entitled to immediate release or that if Plaza is entitled
7 to release, that he be released from prison without a parole term. Plaza's remedy is limited to the
8 process that is due, which is a new review by the Board comporting with due process. *See Benny*
9 *v. U.S. Parole Comm'n*, 295 F.3d 977, 984-85 (9th Cir. 2002) (a liberty interest in parole is
10 limited by the Board's exercise of discretion, and a due process error does not entitle an inmate
11 to a favorable parole decision).

12 13. Plaza fails to state or establish any grounds for habeas corpus relief.

13 14. Except as expressly admitted in this Answer, Respondent denies the allegations of the
14 Petition.

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaza claims that the Board's 2006 decision finding him unsuitable for parole violated his due process rights. But Plaza merely alleges a disagreement with the Board's decision, and fails to establish that the state court decisions denying his due process claims were contrary to, or an unreasonable application of clearly established federal law as determined by the United States Supreme Court, or were based on an unreasonable determination of the facts. Thus, there are no grounds for federal habeas relief.

ARGUMENT

I.

PLAZA HAS NOT SHOWN THAT HE IS ENTITLED TO RELIEF UNDER AEDPA.

Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) a federal court may not grant a writ of habeas corpus unless the state court's adjudication was either: 1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;" or 2) "based on an unreasonable determination of the facts in light of the evidence presented at the State Court proceeding." 28 U.S.C. § 2254(d)(1-2) (2000). Plaza has not demonstrated that he is entitled to relief under this standard.

A. Plaza Has Not Shown that the State Court Decisions Was Contrary to Clearly Established Federal Law.

22 As a threshold matter, the Court must decide what, if any, “clearly established Federal law”
23 applies. *Lockyer v. Andrade*, 538 U.S. 63, 71 (2003). In making this determination, the Court
24 may look only to the holdings of the United States Supreme Court governing at the time of the
25 state court’s adjudication. *Carey v. Musladin*, ___ U.S. ___, 127 S. Ct. 649, 653 (quoting
26 *Williams v. Taylor*, 529 U.S. 362 (2000)). The only case in which the Supreme Court has
27 addressed the process due in state parole proceedings is *Greenholtz*. *Greenholtz*, 442 U.S. 1.
28 The Supreme Court there held that due process is satisfied when the state provides an inmate an

1 opportunity to be heard and a statement of the reasons for the parole decision. *Id.* at 16. "The
 2 Constitution does not require more." *Id.*^{1/} No other Supreme Court holdings require more at a
 3 parole hearing.

4 Plaza does not contest that he received the *Greenholtz* protections. (*See generally* Pet.)
 5 Because *Greenholtz* was satisfied and *Greenholtz* is the only Supreme Court authority regarding
 6 an inmate's due process rights during parole proceedings, the state court decision upholding the
 7 Board's decision was not contrary to clearly established federal law. Thus, the Petition should be
 8 denied.

9 Although Ninth Circuit has held that the Board's decision must be supported by some
 10 evidence, there is no clearly established federal law applying this standard to parole decisions.
 11 The Supreme Court has held that under AEDPA a test announced in one context is not clearly
 12 established federal law when applied to another context. *Wright v. Van Patten*, ___ U.S. ___, 128
 13 S. Ct. 743, 746-47 (2008); *Schrirro v. Landigan*, ___ U.S. ___, 127 S. Ct. 1933 (2007); *Musladin*,
 14 127 S. Ct. at 652-54; *see also, Foote v. Del Papa*, 492 F.3d 1026, 1029 (9th Cir. 2007); *Nguyen*
 15 v. *Garcia*, 477 F.3d 716, 718, 727 (9th Cir. 2007); *Crater v. Galaza*, 491 F.3d 1119, 1122 (9th
 16 Cir. 2007). The Supreme Court developed the some-evidence standard in the context of a prison
 17 disciplinary hearing, *Superintendent v. Hill*, 472 U.S. 445, 457 (1985), which is a fundamentally
 18 different context than a parole proceeding. Because the tests and standards developed by the
 19 Supreme Court in one context cannot be transferred to distinguishable factual circumstances for
 20 AEDPA purposes, it is not appropriate to apply the some-evidence standard of judicial review to
 21 parole decisions.

22 Thus, the Ninth Circuit's application of the some-evidence standard to parole decisions is
 23 improper under AEDPA. *See, e.g., Biggs v. Terhune*, 334 F.3d 910 (9th Cir. 2003); *Sass*, 461
 24 F.3d at 1128; *Irons v. Carey*, 505 F.3d 846, 851 (9th Cir. 2007). Moreover, AEDPA does not

26 1. The Supreme Court has cited *Greenholtz* approvingly for the proposition that the "level
 27 of process due for inmates being considered for release on parole includes an opportunity to be heard
 28 and notice of any adverse decision" and noted that, although *Sandin* abrogated *Greenholtz*'s
 methodology for establishing the liberty interest, *Greenholtz* remained "instructive for [its]
 discussion of the appropriate level of procedural safeguards." *Austin*, 545 U.S. at 229.

1 permit relief based on circuit caselaw. *Crater*, 491 F.3d at 1123, 1126 (§ 2254(d)(1) renders
 2 decisions by lower courts non-dispositive for habeas appeals); *Earp v. Ornoski*, 431 F.3d 1158,
 3 1182 (9th Cir. 2005) (“Circuit court precedent is relevant only to the extent it clarifies what
 4 constitutes clearly established law.” . . . “Circuit precedent derived from an extension of a
 5 Supreme Court decision is not clearly established federal law as determined by the Supreme
 6 Court.”); *Duhaime v. Ducharme*, 200 F.3d 597, 600-01 (9th Cir. 2000). Therefore, the Ninth
 7 Circuit’s use of the some-evidence standard is not clearly established federal law and is not
 8 binding on this Court.

9 Moreover, Plaza has not demonstrated that the Board’s reliance on its regulations to find
 10 him unsuitable for parole violates his federal rights in any way. To the extent he is alleging a
 11 violation of state law — such as his allegations that the Board applied California’s statutory
 12 parole criteria in an arbitrary and capricious manner or that he has a reasonable expectation of
 13 release to parole based on Penal Code section 3041, subdivision (a) — federal habeas relief is
 14 precluded. A writ of habeas corpus is available under 28 U.S.C. § 2254 only on the basis of
 15 some transgression of federal law binding on the state courts. *See Peltier v. Wright*, 15 F.3d 860,
 16 861 (9th Cir. 1993). A federal writ is not available for alleged error in the interpretation or
 17 application of state law. *See Estelle v. v. McGuire*, 502 U.S. 62, 67-68 (1991); *Park v.*
 18 *California*, 202 F.3d 1146, 1149 (9th Cir. 2000); *Middleton v. Cupp*, 768 F.2d 1083, 1085 (9th
 19 Cir. 1985).

20 Even assuming Plaza alleges a federal claim, he is not entitled to federal habeas relief
 21 under AEDPA. Because the Board and state courts provided Plaza with individualized
 22 consideration regarding his suitability for parole, Plaza failed to prove that the Board applied
 23 California’s statutory parole criteria in an arbitrary and capricious manner. Moreover, there is no
 24 United States Supreme Court law mandating that a release date be calculated before an inmate is
 25 found suitable for parole. Thus, Plaza cannot state a claim for relief under AEDPA.

26 Similarly, Plaza’s related claim that the Board’s reliance on the immutable factor of his
 27 commitment offense violates due process finds no support in Supreme Court precedent.
 28 Although the Ninth Circuit has suggested that this might amount to an additional due process

1 claim, *Biggs*, 334 F.3d at 917, because there is no clearly established federal law precluding
 2 reliance on unchanging factors federal habeas relief is not available. 28 U.S.C. § 2254(d).

3 In sum, the only clearly established federal law setting forth the process due in the parole
 4 context is *Greenholtz*. Plaza does not allege that he failed to receive these protections.

5 Therefore, Plaza has not shown that the state court decisions denying habeas relief were contrary
 6 to clearly established federal law.

7 **B. Plaza Has Not Shown that the State Courts Unreasonably
 8 Applied Clearly Established Federal Law.**

9 Habeas relief may only be granted based on AEDPA's unreasonable-application clause
 10 where the state court identifies the correct governing legal rule from Supreme Court cases but
 11 unreasonably applies it to the facts of the particular state case. *Williams*, 529 U.S. at 406. The
 12 petitioner must do more than merely establish that the state court was wrong or erroneous. *Id.* at
 13 410; *Lockyer*, 538 U.S. at 75. Respondent recognizes that the Ninth Circuit applies the some-
 14 evidence standard as clearly established federal law, but even accepting that premise, Plaza is not
 15 entitled to federal habeas relief. Indeed, the California Supreme Court has adopted *Hill*'s some-
 16 evidence test as the judicial standard to be used in evaluating parole decisions, *In re Rosenkrantz*,
 17 29 Cal. 4th 616 (2002), and Plaza has not shown that the state courts unreasonably applied the
 18 standard.

19 Here, the superior applied the some-evidence test and issued a reasoned decision finding
 20 that Plaza's commitment offense and the trivial motive for his crime was some evidence to
 21 support denying him parole. *Ylst v. Nunnemaker*, 501 U.S. 797, 803-04 (1991) (federal court
 22 looks to the last reasoned state court decision as the basis for the state court judgment); (Ex. B at
 23 1-2.) Although Plaza invites the Court to re examine the facts of his case and re-weigh the
 24 evidence presented to the Board, there is no Supreme Court law permitting this degree of judicial
 25 intrusion. Indeed, the Supreme Court has recognized the difficult and sensitive task faced by the
 26 Board in evaluating the advisability of parole release. *Greenholtz*, 442 U.S. at 9 10. Thus,
 27 contrary to Plaza's belief that he should be paroled based on the evidence in support of his parole
 28 (*see generally*, Pet.), the Supreme Court has stated that in parole release, there is no set of facts

1 which, if shown, mandate a decision favorable to the inmate. *Id.* Thus, Plaza has not
2 demonstrated that the state court reasonably applied the minimal some-evidence test. *Hill*, 472
3 U.S. at 457.

4 **C. Plaza Has Not Shown that the State Court Decisions Were
5 Based on an Unreasonable Determination of the Facts.**

6 Under § 2254(d)(2), habeas corpus can not be granted unless the state courts' decisions
7 were based on an unreasonable determination of the facts in light of the evidence presented in the
8 state court. The state court's factual determinations are presumed to be correct, and the petitioner
9 has the burden of rebutting that presumption by clear and convincing evidence. 28 U.S.C. §
10 2254(e)(1).

11 Although Plaza alleges that the Board's decision is not supported by the evidence, he
12 does not show that the state court made factual errors. Specifically, the court found that some
13 evidence supported the Board's finding that Plaza's murder offense was carried out in a
14 calculated and dispassionate manner because there was evidence that Plaza drove slowly with his
15 headlights turned off to avoid detection by the victim and thus showed planning and a deliberate
16 intent to kill the victim. (Ex. B at p. 1.) The court also found that there was some evidence that
17 the motive for Plaza's crime was trivial in relationship to the offense because he shot the victim
18 for being a rival gang member, noting that there was no evidence that the victim had threatened
19 or harmed Plaza. (*Id.* at 2.)

20 Thus, for the foregoing reasons, Plaza has not alleged by clear and convincing evidence
21 that the factual determinations are incorrect. Plaza simply disagrees with the weight the Board
22 assigned to the evidence. This disagreement does not entitle Plaza to federal habeas relief.

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2 **CONCLUSION**
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4 Plaza has not demonstrated that the state court decisions denying habeas relief were
5 contrary to, or an unreasonable application of, United States Supreme Court authority, or based
6 on an unreasonable determination of the facts. Thus, the Petition should be denied.
7

8 Dated: July 2, 2008
9

10 Respectfully submitted,
11

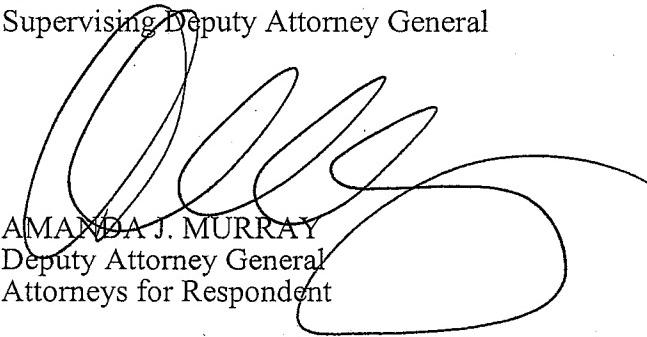
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Plaza v. Curry**

No.: **C08-1589 JF**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 2, 2008, I served the attached

**ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS;
MEMORANDUM OF POINTS AND AUTHORITIES**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Jesse M. Plaza, H-12371
Correctional Training Facility
P.O. Box 689
ZW-302U
Soledad, CA 93960-0689
in pro per**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 2, 2008, at San Francisco, California.

M.M. Argarin

Declarant

M.M. Argarin

Signature

**EXHIBIT A
Part 1 of 2**

MC-275

Name JESSE PLAZA
 Address CTF CENTRAL F-338U
P.O. BOX 689
SOLEDAD, CA 93960-0689

CDC or ID Number H-12371

CONFORMED COPY
 OF ORIGINAL FILED
 Los Angeles Superior Court

FEB 23 2007

John A. Clarke, *Administrative Officer/Clerk*
DAVA, Deputy
 By _____

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES
 (Court)

PETITION FOR WRIT OF HABEAS CORPUS

JESSE PLAZA

Petitioner

vs.

BEN CURRY, Warden

Respondent

Correctional Training Facility

No.

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

- Read the entire form before answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

Page one of six

This petition concerns:

- | | |
|--|--|
| <input type="checkbox"/> A conviction | <input checked="" type="checkbox"/> Parole |
| <input type="checkbox"/> A sentence | <input type="checkbox"/> Credits |
| <input type="checkbox"/> Jail or prison conditions | <input type="checkbox"/> Prison discipline |

Other (specify): Illegal finding of unsuitability by the Board of Parole Hearings.

1. Your name: Jesse Plaza

2. Where are you incarcerated? Correctional Training Facility, Soledad, CA 93960-0689

3. Why are you in custody? Criminal Conviction Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

First Degree Murder

b. Penal or other code sections: Penal Code §187

c. Name and location of sentencing or committing court: Los Angeles Superior Court, Norwalk, CA

d. Case number: VA004108

e. Date convicted or committed: 7-20-91

f. Date sentenced: 9-28-91

g. Length of sentence: 25 years to life

h. When do you expect to be released? "unknown"

i. Were you represented by counsel in the trial court? Yes. No. If yes, state the attorney's name and address:

Stephen Garcia, Attorney at Law , address unknown

4. What was the LAST plea you entered? (check one)

Not guilty Guilty Nolo Contendere Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

Jury Judge without a jury Submitted on transcript Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

**THE NINTH CIRCUIT COURT OF APPEALS HAS FOUND THAT THE MANDATORY LANGUAGE OF P.C. 3041
(b) IMPOSES AN AFFIRMATIVE OBLIGATION BY THE CALIFORNIA BOARD OF PAROLE HEARINGS
TO GRANT PAROLE, WHICH CREATES A LEGALLY COGNIZABLE LIBERTY INTEREST IN PAROLE
AND A PRESUMPTION THAT PAROLE RELEASE WILL BE GRANTED. THERE IS NO EVIDENCE HAVING
AN "INDICIA OF RELIABILITY" THAT PETITIONER IS A CURRENT OR UNREASONABLE RISK TO
SOCIETY. THE HEARING AND DECISION BY THE CALIFORNIA PAROLE BOARD WAS ARBITRARY AND
CAPRICIOUS IN VIOLATION OF PETITIONER'S STATE AND FEDERAL DUE PROCESS RIGHTS.**

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Petitioner, JESSE PLAZA, petitions for a writ of habeas corpus and
by this verified petition alleges as follows:

I

Petitioner is in custody of the California Department of Corrections
at the Correctional Training Facility in Soledad, California serving
a term of 25 years to life following his conviction in 1991 in Los Angeles
County Superior Court Case No. VA004108 wherein petitioner was convicted
of first degree murder in violation of Penal Code section 187. Petitioner
was received by the Department of Corrections on October 9, 1991, when
his life term commenced. This petition is intended to give meaning to
Petitioner, JESSE PLAZA, (hereinafter "Petitioner"), sentence of 25 years
to life for 'first degree murder'. On May 1, 2006, Petitioner went before
the Board of Parole Hearings for his initial parole. (Petitioner's minimum

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

1 eligible parole date is 1-25-07) for a finding of suitability, and the
2 setting of his term uniformly. Petitioner submits that the Board of
3 Parole Hearings (hereafter "Board") regulations, California Code of
4 regulations, Title 15, section 2402(a) DEMANDS that the Board set a
5 release date unless Petitioner currently presents an unreasonable risk
6 of danger to public safety. Petitioner submits that there is nothing
7 in the Board's decision indicating the basis for that belief, which
8 Petitioner discusses and proves *infra*.

9
10 II

11 On May 1, 2006, the Board conducted petitioner's Initial Parole
12 Consideration Hearing. The Board found petitioner unsuitable and denied
13 parole for a period of two years. (Exhibit "A" 89-93) In support of its
14 findings that petitioner currently posed an unreasonable risk to society,
15 the Board found that the "offense was carried out in an especially cruel
16 and callous manner", "carried out in a calculated manner", "The motive
17 for the crime was very trivial in that it was a gang related shooting",
18 and the unsupported conclusion that petitioner has refused to take
19 responsibility for his actions. Petitioner was, however, commended for
20 programming extremely well, commended for remaining disciplinary free,
21 obtaining a positive psychological evaluation, participating in AA and
22 NA, completing two vocations and securing positive parole plan. (Exhibit
23 "A", p. 89-93). Despite all the evidence supporting a granting of parole,
24 the Board found petitioner unsuitable for a grant of parole based on
25 the commitment offense, including and unsupported conclusion that
26 petitioner tries to minimize his responsibility.

27 //

III

Petitioner alleges that there was no evidence to support the Board's finding that he poses a current unreasonable risk if released. In fact, all current, reliable evidence presented to the Board shows that petitioner poses no risk if released. Petitioner further alleges that the Parole Board violated petitioner's statutory rights and his Fifth and Fourteenth Amendments (due process rights), when it refused to grant petitioner a parole date despite evidence supporting a finding that petitioner posed no unreasonable risk of harm. Furthermore, his continued confinement constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

IV

Petitioner also submits the Board spoke in meaningless generalities and never specified the exact nature of Petitioner's current character that would make Petitioner a danger to society. And by not doing so, the Board violated Penal Code §3041, which dictates that the Board shall normally set a parole release date at Petitioner's Initial Hearing. Petitioner, further submits that the issue raised in this Petition are of constitutional dimension, questioning the legality of Petitioner's confinement. An indeterminately sentence prisoner must be paroled when there is no evidence that Petitioner is a current or unreasonable risk to society. The California Supreme Court has recognized that parole applicants' posses a "protected liberty interest under the California Due Process Clause". (In re Rosenkrantz, (2002) 29 Cal.4th 616, 660; cf. McQuillion v. Duncan (9th Cir. 2002) 306 F.3d 895, 901. It is well established that Courts may review the Board's parole decisions under

1 a highly deferential standard of review, and must reverse those decisions
2 if there is not "some evidence" in the record to support them.
3 (Rosenkrantz, supra 29 Cal.4th at 667; In re Smith (2003) 109 Cal.App.4th
4 489. Petitioner submits there is no evidence that Petitioner is currently
5 a threat to public safety.

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7 PETITIONER NOW SUBMITS THE FOLLOWING POINTS AND AUTHORITIES IN SUPPORT

8 OF THIS PETITION FOR WRIT OF HABEAS CORPUS

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1 MEMORANDUM OF POINTS AND AUTHORITIES

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3 THE MURDER STATUTES TOGETHER WITH THE PAROLE STATUTES
4 IMPOSE AN AFFIRMATIVE OBLIGATION UPON THE BOARD TO
5 SET PAROLE DATES IN CASES LIKE THIS ONE. THE
6 REGULATIONS IMPLEMENT THOSE STATUTES.

7 Under the Board's regulations, pursuant to Penal Code
8 §3041(b), a prisoner may be found unsuitable for parole if
9 the Board determines that the offense or a past offense and
10 its timing is of such gravity that a longer period of
11 incarceration is required in the interest of public safety.
12 The determination is made based on the standards set forth
13 by the Board's regulations. The principle guidelines in making
14 the determination is Cal. Code. Regs. §2401 (c)-(1-6):

15 (1) Commitment Offense. The prisoner committed the offense in
16 an especially heinous, atrocious or cruel manner. The factors
17 to be considered include:

18 (A) Multiple victims were attacked, injured, or killed
19 in the same or separate incidents.

20 (B) The offense was carried out in a dispassionate and
21 calculated manner, such as an execution-style murder.

22 (C) The victim was abused, defiled or mutilated during
23 or after the offense.

24 (D) The offense was carried out in a manner which
25 demonstrated an exceptionally callous disregard for human
26 suffering.

27 //

(E) The motive of the crime is inexplicable or very trivial in relation to the offense.

(2) Previous Record of Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age.

(3) Unstable Social History. The prisoner has a history of unstable or tumultuous relationships with others.

(4) Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

(5) Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense.

(6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail.

Circumstances (1), (2), and (4) reasonably reflect the sole specified and authorized statutory exception to setting parole release dates, for the current or a past convicted offense(s). Factor (E) of Circumstances (1), however, pertaining to the motive of the crime as being inexplicable, although typically stated by the board as a factor for denying parole, is a rare circumstance, as there is almost always, as here, an explanation

as to why the offense occurred. Whether the motive was trivial is another matter. As one court noted:

"The epistemological and ethical problems involved in the ascertainment and evaluation of motive are among the reasons the law has sought to avoid the subject. As one authority has stated, "[hardly any part of penal law is more settled than that motive is irrelevant." (Hall, General Principles of Criminal Law (2d ed. 1960) at p. 88; see also Husak, **Motive and Criminal Liability** (1989) vol. 8, No. 1, Crim. Justice Ethics 3.)"

The court further explained:

"The offense committed by most prisoners serving life sentences is, of course, murder. Given the high value our society places upon life, there is no motive for unlawfully taking the life of another human being that could not be deemed "trivial". The Legislature has foreclosed that approach, however, by declaring that murderers with life sentences must "normally" be given release dates as they approach their minimum eligible release dates. (Pen. code, §3041, subd. (a).)" (**In re Scott**, 119 Cal.App.4th 871, 892-893.)

It is therefore questionable whether the factor has any evidentiary value in this case. If the motive was indeed inexplicable "A person whose motive for a criminal act can not be

explained or is unintelligible is therefore unusually unpredictable and dangerous." (Id.) Such is not the case here.

The primary circumstance and factors considered to make the determination, §2402(d)(1)(B) and (D), have been explained by the courts. To qualify for the authorized exception, an offense must be exceptionally egregious. The court of appeal characterized this as follows:

"**In re Van Houten** (2004) 116 Cal.App.4th 339 [10 cal.Rptr.3d 406] illustrates the sort of gratuitous cruelty required. The prisoner in that case was involved in multiple stabbings of a woman with a knife and bayonet, While she was dying, the victim was made aware her husband was suffering a similarly gruesome fate. As stated by the court, "[t]hese acts of cruelty far exceeded the minimum necessary to stab a victim to death." (Id. at p. 351) Other examples of aggravated conduct reflecting an "exceptionally callous disregard for human suffering," are set forth in Board regulations relating to the matrix used to set base terms for life prisoners (§2403, subd. (b)); namely, "torture," as where the "[v]ictim was subjected to the prolonged infliction of physical pain through the use of non-deadly force prior to act resulting in death," and "severe trauma." as where "[d]eath resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a

weapon not resulting in immediate death or actions calculated to induce terror in the victim." (Ibid.) (*In re Scott*, supra, 119 Cal.App.4th 871, 892.)

In this case there is no evidence of gratuitous cruelty or torture such as described in the foregoing. Moreover, even in such cases, involving those exceptional factors, the Board's regulations and suggested terms indicate parole suitability after serving the indicated base terms.

Circumstances (3) of the unsuitability factors, "Unstable Social History" appears to be related to the commission of violent past offenses and gravity thereof. It is not a factor in this case.

Circumstance (5), "Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense." is not applicable in this case, and the Psychological Report does not indicate any such assessment.

Circumstance (6), "Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail." This should reasonably relate to misconduct like that which may result in rescission proceedings as is enumerated in Cal. Code Regs., tit. 15, §2451, or more properly, be punished by the provisions of Cal. Code Regs., tit. 15, §2410, which provides for "Postconviction Credit", and not used as a substitute for statutory "suitability" provisions which specify only the gravity of the current or a past offense to deny parole.

This "circumstance" is often relied upon by the Board to deny parole to indeterminately sentenced prisoners repeatedly and

for years at a time. Yet, determinately sentenced prisoners might suffer only the loss of a few months of credit, once, for the same misconduct, which they can even get restored. As such, the Board's determinations that rely on such circumstances to deny parole, particularly beyond the indicated matrix base terms, is unauthorized by Penal Code 3041, is unfair, unreasonable and constitutes unequal punishment for the same conduct. A blatant violation of Petitioner's due process rights protected by the 5th & 14th Amendments of the United States Constitution.

**RELIANCE ON THE COMMITMENT OFFENSE TO DENY PAROLE AT
ALL INITIAL HEARINGS AND ALMOST ALL SUBSEQUENT HEARINGS
IS INCONSISTENT WITH STATUTORY LANGUAGE AND CONTRARY TO
SUPREME COURT AUTHORITY**

The Board's reliance on the commitment offense to deny parole at all initial hearings and almost all subsequent hearings fails to give effect to the statutory minimum terms despite Penal Code §3041 language that parole shall normally be granted at the initial hearing. The Board promulgated regulations pursuant to Penal Code §3041(a) which include standardized gravity matrices, but routinely denies parole for the same circumstances and factors specifying appropriate terms. (See Cal. Code Regs., tit. 15, §2400 et seq., footnotes citing implementation authority.)

Although it is presumed that the Board performs its duties lawfully, it is hardly debatable that the Board does not "normally" set parole release dates, as a matter of policy. And when it does, in about 2% of cases, the Governor reverses most of those, like here, as a matter policy, where there is no substantial evidence to support the decision. See, for example, In re Capistran, (2003) 107 Cal.App.4th 1297, In re Mark Smith, (2003) 109 Cal.App.4th 489; In re Ernest Smith, (2003) 114 Cal.App.4th 343, to name a few published cases. Because of the minimal "evidence" required under the "some evidence" standard, most of the denials and reversals of parole withstand court challenges. release on parole presumed by statutory language gives rise to a substantial right, but has been disregarded. the

great majority of indeterminately sentenced prisoners have been repeatedly denied parole, but would have been released long ago under reasonable administration of the statutes and regulations.

"The Court has an obligation, however, to look beyond the facial validity of a statute that is subject to possible unconstitutional administration since a "law though 'fair on its face and impartial in appearance' may be open to serious abuses in administration and courts may be imposed upon if the substantial rights of the persons charged are not adequately safeguarded at every stage of the proceedings." Minnesota v. Probate Court (1940) 309 U.S. 270, 277.

Although the most recent interpretation of the statute at issue now holds that proportionality or comparision of like offenses is not required, i.e., In re Dannenberg (2005) 34 Cal.4th 1061, the Ninth Circuit has previously stated:

"While the interpretation gloss on the statute may bind this court as a matter of statutory construction, we are not, however, similarly bound as to the constitutional effect of the construction." McSherry, 880 F.2d at 1053" (Aponte v. Gomez, 993 F.2d 705 (9th Cir. 1993) (emphasis added)

This most recent interpretation of the statutes is

inconsistent with decisions and history leading up to the changes in the parole statutes, which prior decisions recognized, as previously discussed:

"In contrast, by altering the statutory scheme and enacting the DSL, the Legislature recited specifically that it "finds and declares that the purpose of imprisonment for crime is punishment." (Pen. Code §1170, subd. (a)(1); all subsequent statutory references are to this code.) The new law provides that an inmate's "release date shall be set in manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public, and that will comply with the sentencing rules that the judicial council may issue and any sentencing information relevant to the setting of parole release dates. **The board shall establish criteria for the setting of parole release dates** and so doing shall consider the number of victims of the crime for which the prisoner is sentenced and other factors in mitigation and aggravation of the crime." (§3041, subd. (a), *italics added.*) The present parole guidelines were promulgated pursuant to the new act. Thus, the guidelines are not mere administrative responses to the Board's internal shifting discretion but rather reflect basic legislative alterations in the underlying parole scheme." (*In re Stanworth* (1982) 33 Cal.3d 176, 182.)
(Underlining emphasis added.)

Clearly, the interpretation of the law shortly after it was changed was that the Board's discretion was limited by the legislative alterations and guidelines. The changes were clearly intended to place limits on the Board's discretion:

"That, the Montana statute places significant limits on the Board's discretion is further demonstrated by its replacement of an earlier statute which allowed absolute discretion ..." Board of Pardons v. Allen, 482 U.S. 369.

Like with the Montana statute, in California the former Penal Code §3041 was completely changed, mandating the establishment of criteria for the normal setting of parole dates. Furthermore, Penal code §3041(b) clearly spells out why the board may require an extended period of incarceration. Because the Governor is bound by the same standards as the Board, the same would apply to the Governor. The current interpretive gloss on the parole and related statutes reverts plain statutory intent to the previous parole scheme by judicial omission of part of the whole, and violates principles of statutory construction, offending due process and ex post facto law.

THE "SOME EVIDENCE" STANDARD MUST "TEND LOGICALLY", AND BY "REASONABLE INFERENCE" TO ESTABLISH A FACT RELEVANT TO PETITIONER'S SUITABILITY FOR PAROLE.

Petitioner, denies the "some evidence" standard used by the Board satisfied the requirements under both state and federal due process. To satisfy the "some evidence" standard of Judicial Review of the Board's ultimate decision, only a "modicum of evidence is required". **Rosenkrantz**, 29 Cal.4th at 677; **Hill, supra**, 427 U.S. at 456. However, the "some evidence" standard applies to evidentiary sufficiency and is not a substitute for other due process requirements, **Edward v. Balisok**, (1977) 520 U.S. 641, 648, such as the Board's own preponderance of material and relevant evidence. (See Cal.Code of Regualtions, tit 15, section 2000 (50)(63)(91). Thus, to determine whether the Board has fulfilled it's minimal due process procedural requirements, a reviewing Court looks not first at the decision, but the process in which it arrived at that decision. **Balisok, supra, Ibid.**

Here the Board continues to interpret the "some evidence" standard illegally. The Boards decision in this case failed to point to evidence demonstrating that Petitioner **currently** presents an unreasonable risk of danger to society - the ultimate question in determining Petitioner's suitability for parole (CCR, Tit. 15, §2403, subd. (a) For this reason, the evidence underlying the Board's decision does not tend logically and by reasonable inference, to establish a fact relevant to the inmate's suitability for parole. (**Morrall, supra**, 102 Cal.App.4th

at pp. 298-299). The discretion of the Board to determine parole suitability, although broad, is not absolute, and the Board's decisions must be supported by "some evidence" (**In re Powell**, (1988) 45 Cal.3d 894, 902-904; see also **Terbune v. Superior Court** (1998) 65 Cal.App.4th 864, 872-873; **In re Minnis** (1972) 7 Cal.3d 639, 646-647.

The United States Supreme Court has made it clear that the "some evidence" standard discussed in **Superintendent v. Hill** (1985) 472 U.S. 445, is only one aspect of judicial review for compliance with minimum standards of due process. The California Legislature has given the Board guidelines to follow in evaluating a parolee's eligibility for parole, mandating that the Board "shall normally" set a parole release date... "in a manner that will provide "uniform terms" for offenses of similar gravity and magnitude in respect to their threat to the public"... (Id., quoting Penal Code §3041, subd. (a).) The Board is required to "establish criteria for the setting of parole release dates." (Ibid.) However, the Board lacks discretion to promulgate regulations that are inconsistent with governing statutes, and the judicial branch has the final word on questions of legal interpretation." (Id., citing **Terbune v. Superior Court**, supra, 65 Cal.App.4th 864, 873)(emphasis added).

Petitioner asserts that the "some evidence" standard is being applied arbitrarily by the reviewing Court's in the State of California. The Courts of California, both State and Federal, seem to have settled in for the "some evidence" standard of Judicial Review. (See, e.g., **McQuillion v Duncan**, 306 F.3d 895 (9th cir. 2002), and in **In re Rosenkrantz**, 29 Cal.4th 616 (2002).

without taking into consideration the "substantial evidence" standard which is required by reviewing courts **Consolidated Edison Co. vs NLRB**, 305 U.S. 197 (1939) (See Page 9)

The "some evidence" standard derives from the United States Supreme Court decision in **Superintendent v. Hill**, 472 U.S. 445; 105 S.Ct. 276 (1985), and is expressly a standard of "Judicial Review" for reviewing Court's, not the Board's Standard.

The first California decision applying the "some evidence" standard of **Hill** was in the case of **In re Powell**, 45 Cal.3d 894 (1988). The **Powell** case was one where the Board of Prison Terms rescinded a parole grant based on a psychological report. In his petition, **Powell** argued for the "independent judgment" standard to the facts before the Board, or alternatively, the "substantial evidence" test. The People argued for the deferential "some evidence" test. **Powell** argued for the independent judgment test analogizing habeas corpus proceedings to administrative mandamus proceedings under California Code of Civil Procedure section 1094.5. That code section provides for review of administrative orders or decisions; in some cases it applies the independent judgment test while in other circumstances the substantial evidence test. If the former, and abuse of discretion is established when the Court, exercising its independent judgment determines the administrative findings are not supported by the weight of the evidence. If the latter, the Court must accept all evidence favorable to the Respondent as true and disregard any unfavorable evidence, if the evidence so viewed is sufficient as a matter of law, the order or decision must be affirmed. In rejecting **Powell's** argument, the court held that standard only

applies when an administrative decision affects a vested right. This is a pivotal point. The **Powell** Court determined that "a prison inmate has no vested right in his prospective liberty on a parole release date". (id. at 903). It cited to pre-1977 cases of **In re Fain**, 65 Cal.App.3d 376 (1976), and to **In re McLain**, 5 Cal.2d 78, 87 (1960), also cited by **Fain**, *supra*. However, two critical facts were not present at the time of the decision, (1) there was no liberty interest created by pre-1977 section 3041; and (2) the California Supreme Court had not defined post-1977 section 3041, as having vested a liberty interest in a parole release date, as it did later in the **Rosenkrantz** decision 29 cal.4th 616 (2002), following on the heels of **McQuillion v, Duncan**, 306 F.3d 895, 901-903 (9th cir. 2002), which interpreted Section 3041 as creating an "expectancy of release" that was a cognizable liberty interest protected by federal due process. Thus, the **Powell** Court was wrong about whether a vested right was involved, and its decision to apply the "some evidence" standard instead of the "independent judgment test" or "substantial evidence" was also wrong because it was based on an incorrect interpretation of law.

Yet, the California Supreme Court in the **Rosenkrantz** case, 29 Cal.4th 616, applied the "some evidence" standard of **Superintendent v. Hill**, 472 U.S. 445 (1985), in such language as to confuse the lower Courts as to its specific purpose. i.e., the standard of judicial review. It carried forward the "some evidence" standard originally applied in **In re Powell**, 45 Cal.3d 894 (1988). The **Rosenkrantz** Court did not make clear that the "some evidence" standard was not a standard applied by the board

itself as a standard of proof in its deliberations. It appears that the omission by the **Rosenkrantz Court** of any articulation of what the Board's standard of evidence would be as a critical component to the deliberative process of weighing and balancing of evidence, has resulted in the Board not applying their own preponderance of relevant and material evidence standard (CCR, Title 15, Div. 2, Section 2000; (50) Good Cause (63) Material Evidence (91) Relevant Evidence), thereby rendering every decision to grant or deny parole completely standardless, and thus arbitrary and capricious.

Typically in California, the judicial standard of review of the ultimate decision of the Board of Parole Hearings denying parole to a prisoner has been the "some evidence" standard. *In re Dannenberg* (2005) 34 Cal.4th 1061; *In re Ramirez* (2001) 94 Cal.App.4th 549, 564; *In re Rosenkrantz*, [Rosenkrantz v] (2002) 29 Cal.4th 565, 616. Although both **Rosenkrantz** and **Dannenberg** thus affirmed the importance of judicial review of the board decisions, the decision's provide less than clear guidance as to the proper application of the "some evidence" standard articulated in both decisions. Of particular concern is the **Dannenberg** Court's brief discussion in dicta of the "commitment offense" factor, which can improperly be read as granting to the Board the ability to deny parole on the basis of almost any fact imaginable. As a result, there is a real risk the State will interpret the standard to assert, de facto, the power it has been expressly denied; effective immunity from meaningful judicial review of parole decision. It should be recognized, however, that

several courts are struggling to determine exactly how this standard applies. While other Court's (post Dannenberg & Rosenkratz) has held that the "some evidence" standard must apply to **current dangerousness**. While interpreting this standard the California Court of Appeals, Second Appellate District in the case of **In re WEN LEE**, (Oct. 17, 2006, B188831)(2006 DJDAR 13961) the Court held;

...We conclude, however, that the governor erred. The test is not whether some evidence supports the reasons the Govenor cites for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety. (Cal.Code Regs., tit. 15, §2402, subd. (a) [parole denied if prisoner "will pose an unreasonable risk of danger to society if released from prison]; see **In re Scott** (2005) 133 Cal.App.4th 573, 595 ["The commitment offense can negate suitability [for parole] only if circumstances of the crime ... rationally indicate that the offender will present an unreasonable public safety risk if released form prison"] but see **In re Lowe** (2005) 130 Cal.App.4th 1405 [suggested "some evidence" applies to the factors, not dangerousness]. Some evidence of the existence of a particular factor does not necessarily equate to some evidence the parolee's release unreasonably endangers public safety.

In the case of **In re Elkins**, (Oct. 31, 2006, A111925) the

Court of Appeals, First Appellate District, held that;

..."The 'some evidence' standard is extremely deferential and reasonably cannot be compared to the standard of review involved in ... considering whether substantial evidence supports the findings" , nevertheless, it requires" ' "some indicia of reliability" ' " (**Scott II, supra**, 133 Cal.App.4th at p. 591, quoting **Biggs v. Terbune**, (9th Cir. 2003) 334 F.3d 910, 915) and "may be understood as meaning that suitability determinations must have some rational basis in fact" (**Scott II**, at p. 590, fn. 6).

One thing is for certain, even if a mere "some evidence" standard is to apply in this review, that standard is only a vehicle for the Court's review of the Board's decision, not a standard for the Board itself to apply. The findings to support that initial decision by the Board to deny parole, however, must be that the record indicates the Petitioner, poses a "current" danger to the public. That finding can not be based on such flimsy evidence as to render it mere whim or caprice. (See **In re Ramirez**, **supra**, at 564; See also **In re Powell**, (1988). To the contrary, as set forth herein, the Board's decision must be made under the preponderance of evidence standard. (Cal.Code of Reg., Title 15, Div. 2, section 2000 (50) Good Cause).

Petitioner denies the "some evidence" standard used By the Board satisfied the requirements under both state and federal due

process. Petitioner asserts reliance on the Commitment offense does not satisfy the "some evidence" standard. There is no question that under **Rosenkrantz** and **Dannenberg** the statutory "commitment offense" factor is relevant, and that it may at times be enough to deny parole on its own, neither **Rosenkrantz** nor **Dannenberg** stands for the principle that the commitment offense is always enough by itself. In fact, both cases affirmatively state that reliance on the commitment offense alone might, in some circumstances, rise to the level of a due process violation. That conclusion is consistent with the concern raised by the Ninth Circuit in **Biggs v. Terhune**, that the reliance on an ever-frozen, unchanging factor - such as the commitment offense - in denying parole may in certain instances violate due process. This point was also addressed in the case of **In re Ramirez**, 94 Cal.App.4th 549, at 571 (2001), when the Court noted that reliance on the crime after 17 years in prison was arbitrary. Petitioner has been incarcerated 17 years. While the proportionality aspects of the **Ramirez** decision were disapproved by the California Supreme court decision in **In re Danneneberg**, the entirety of **Ramirez** decision, including this aspect, was not disapproved. Therefore, the Board's reliance on the commitment offense violates due process. The predictive value of the crime after 17 years of incarceration is zero. Furthermore, in the case of **In re Scott**, 34 Cal.Rptr.3d 905 (Cal.App.1 Dist. 2005), the Court clearly reaffirmed the rationale of the **Ramirez** Court when it declared ..."Parole is the rule rather than the exception".... Thus, the California Board of Parole Hearings continuous use of the "some evidence" standard as their proper

standard of review is inappropriate, thus, illegal. Furthermore, reviewing Courts using the "some evidence" standard violates principles of appellate review. Substantial evidence is the standard required for a reviewing Court. **Consolidated Edison Co. of New York v. NLRB**, 305 U.S. 197 (1939). It is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. **Chrysler v. U.S. Environment Protection Agency**, C.A., 631 F.2d 865, 890. Under a proper analysis, the "substantial evidence" test, and not a "some evidence" review is the appropriate standard.

ALL RELEVANT AND RELIABLE POST-CONVICTION EVIDENCE
MUST BE GIVEN THE REQUIRED CONSIDERATION IN FAVOR
OF PETITIONER IN LIGHT OF THE EVIDENCE PRESENTED

Petitioner submits that the Board bases its reasons for Petitioner's continued incarceration on historical facts that can never change, thus ignoring the uncontradicted evidence of Petitioner's rehabilitation. Petitioner has achieved the very goal that is hailed by our judicial and correctional systems, coming to prison, turning his life around and committing himself wholeheartedly to bettering himself and the world around him. Petitioner asserts there is **no evidence** that Petitioner is **currently** a threat to public safety. At Petitioner's hearing the Board denied Petitioner parole using static factors, despite overwhelming evidence showing Petitioner's rehabilitation. Petitioner asserts he has taken every available step to improve his life, pay his debt to society, and prepare himself for eventual release, as it is required under penal code §3041 for eligible prisoners serving indeterminate sentences. The Board's reliance on the Commitment Offense as satisfying the "some evidence" standard of review is without merit, after removing the facts erroneously relied upon, relied exclusively upon the Commitment Offense and failed to weigh and consider Petitioner's remorse, positive psychological profile, lack of future dangerousness, and both realistic and positive parole plans including housing, education, and employment. The Board is required to consider all relevant information about a prisoner, not simply his commitment offense. His "risk of danger to society

is to be assessed in light of all relevant information available to the panel. (Cal. Code Regs., tit. 15, §2402(b)).

Under the view of the California parole process, it is clear that the nature of the commitment offense can constitute a basis for denial only to the extent it sheds light on whether a prisoner "now poses a risk of danger to society". Relying on the offense after years in custody and clear evidence of rehabilitation becomes arbitrary. At some point along the parole consideration process, that excuse to refuse to set a parole date enlight of exemplary conduct and behavior becomes arbitrary, and the term, although initially valid, becomes disproportionate and therefore unlawful. As time passes, and as the appropriate uniform term for the offense approaches, the offense itself sheds less and less light on how a prisoner will behave on the outside. His record in prison, his mental health, his conduct and achievements, all shed more light on his readiness to rejoin society. (see *Deluna*, supra 2005 WL 268045, 6) a defendant's postcommitment institutional behavior is relevant to his suitability for parole [citing §2402, subd. (d)(9)], and has both positive and realistic parole plans (see *In re Deluna*, supra, 2005 WL 268045, 5- Stable Relationships with others favor parole (15 CCR §2402 subd. (d)(9), All these factors favor his release. There is no evidence Petitioner now poses a risk of danger to society.

The Board's reasons finding petitioner unsuitable is unreasonable and an abuse of discretion enlight of the evidence presented to the Board by petitioner and the Department of Corrections and Rehabilitation Psychological Department and Counselor.

At the hearing, Correctional Counselor I, T. Verdasoto testified as to Petitioner's programming, and his future residence and employment when paroled:

Therapy and Self-Help Activities: Since Plaza's incarceration, he has participated in Alcoholics Anonymous, Inmate Education Advisory Committee, Bible Study, the Impact Program, Narcotics Anonymous, served as a Deacon, and was a member of the Protestant Choir.

Postconviction Factors: Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/22/92, Plaza was transferred to Calipatria where his custody was reduced to Close B. While in Calipatria, he worked in the culinary, pre-voc. and Compute Programming. Plaza was again transferred to CSP-LAC on 2/3/94. He was classified there with Meddium A custody. While at LAC, Plaza worked in the drycleaning, voc electrical shop, and air cond. refrigerator and heating. On 12/16/97 he was transferred to Avenal where he was in Computer Programming. On 3/13/98 he was transferred to CTF Soledad North Facility where he was assigned to the yard crew 4/7/98 to 4/28/98, and then to PIA Textiles. On 12/31/98 Plaza went to CMC East as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification,

Close B was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF Central Facility, Plaza has been assigned to wing porter, culinary, dental assistant and again culinary, where he remains assigned.

Disciplinay History: Plaza has reemained disciplinary free throughout his incarceration

Residence: Plaza plans on living with his brother, Hector Plaza. Hector's address is 353 Carla Dr., Simi Valley, California 93063. His phone number is (805) 581-6323

Employment: Plaza plans on working at Telair International 4175 Gardain Street, Simi Valley, CA 93063, phone (805) 578-7303.

Assessment: In review of Plaza's parole plans, this counselor does not foresee any problems, however, it is recommended that Plaza updates his support letters prior to his hearing. (see Exhibit "B")

Dr. M. Macomber testified as to Petitioner's his current mental stability and his lack of present and future dangerous:

Psychiatric and Medical History: There is no

psychiatric history. There is no history of serious accidents or head injuries or seizures. His health is good.

Current Mental Status/Treatment Needs: Mr. Plaza related in a serious, sober, and cooperative manner. Mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. He does speak excellent English as well as Spanish. Affect was appropriate. There was no evidence of anxiety or depression. Eye contact was good. His memory was intact. His judgment was intact. His insight and self-awareness were good.

Mr. Plaza has spent a great deal of time in prison trying to improve himself. He currently is attending Coastline College, working on his Associate of Arts Degree. His grades are very good. Also, he has obtained a certificate as a home inspector from professional career institute in Georgia by correspondence. In addition, he has completed several courses toward self-improvement. He has completed a Prison Fellowship Course in Parenting, Anger Management, another 12 week anger management class, Fathers Behind Bars Activity Group, Family Effectiveness Training and Harmony in the Home, Anger Management Course, Christian Basics Class, Teddy Bear Drive Benefiting Children in Crisis, a job

success course, Communicable Diseases, Impact Program focusing on the victim's rights, Christian Living Course, Laubach Literacy Tutor Program, and the Salvation Army Bible Correspondence Course.

Current Diagnostic Impression: Axis I- Drug and alcohol use by history; Axis II- No personality disorder; Axis III- No physical disorder; Axis IV- Life term incarceration; Axis V- Current GAF: 95.

Assessment of Dangerousness: (A) In considering potential for dangerous behavior in the institution. Mr. Plaza has remained entirely disciplinary free. This is commendable. This is very difficult to do. At this time in prison, we are having frequent racial riots. It is very difficult for a Hispanic male to disassociate himself from this activity, which can spontaneously occur in front of him, and if he doesn't get involved, he will receive retaliation. In this case, remaining disciplinary free is a very difficult and commendable achievement. There is no evidence that he has ever been involved in riots, possession of weapons, assaults on others, or threats of any kind. As a result, it is evident that his potential for dangerous behavior in comparison to other inmates is definitely below average.

Mr. Plaza has a chrono from Captain Guerra, in which it

was stated that he had been hand picked to work as a communicator, working as a mediator between the two groups in the institution that had been involved in a riot against esch other. due to his ability to mediate between the groups and to get them to agree to non violence towards each other, the riot that occurred at that time was resolved peacefully, and the result was that the institution was able to unlock everybody and proceed with the program.

(B) In considering potential for dangerous behavior in the community, Mr. Plaza has no prior arrests for violence before the commitment offense. He did receive an arrest as an adult in 1983 for spraying a one inch diameter dot on the wall. He has remained disciplinary free in the institution. In order to determine his risk level on parole, the Level of Service Inventory-Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, current adjustment, and other factors to determine current risk level. On this measure he obtained a score of 3.6 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 96 of them. This is a very low risk level. As a result, he poses no more threat to society than the average citizen in the community, and probably less threat to society at this point in his life.

(C) At the time of the offense, drugs and alcohol were a problem; however, at this point in his life this no longer is an issue. Therefore, there are no significant risk factors in this case.

Clinician Observation/Comments/Reccomendations: There are no mental or emotional problems in this case that would interfere with routine parole planning. Mr. Plaza has obtained vocational training in several areas. He is currently working as a meat cutter in culinary. He has skills in vocational dry cleaning, as well as in vocational air conditioning, refrigeration and heating. He also has a job offer waiting for him upon release. He has very strong family support in the community. All these factors are good indicators of positive parole success. He has maintained his marriage, and his wife continues to be supportive and involved in his life. He maintains constant contact with his three children. Due to his study of the Bible and his commitment to the Christian way of life, he no longer has the irresponsible values and lifestyle that he did prior to the commitment offense. All these factors indicate that his prognosis for successful adjustment in the community is excellent. (see Exhibit "C")

Petitioner asserts that the rehabilitative evidence submitted by Petitioner and both the life Evaluation report and Psychological report is supportive of release contrary to the Board's specious findings. the Biggs court addressed the Boards illegal usage of needed therapy and other illegal reasons to justify a highly illegal denial.

"The record in this case and the transcripts of Biggs hearing before the Board clearly show that many conclusions and factors relied on by the Board were devoid of evidentiary basis".

Petitioner submits that the record in this case is also devoid of evidentiary basis as to the Board's findings that evidence presented is not supportive of release, which violates due process. Petitioner further submits that despite the overwhelming evidence that Petitioner does not present a current risk to public safety. The Board arbitrarily found petitioner unsuitable for release. Petitioner asserts that the real reason given by the Board indicative of unsuitability is the commitment offense, and if allowed to identify the unchanging circumstances as indicative of unsuitability, this would put Petitioner in an impossible situation, where no matter what he shows in terms of positive behavior, reformation, self-help, work skills, parole plans, on just rehabilitation in general, he would never be able to overcome the unchanging facts of the crime. The only logical application of constitutional due process dictates what the Court in **Iron v. Warden**, 358 F.supp.2d 936, 947, (E.D.Cal. 2005) held,

, i.e., that any denial requires the presence of some in-prison behavior showing that the inmate **currently** presents an unreasonable risk of danger if paroled.

Here the facts of the crime have been the only real reason for denying parole. yet, those facts have never been tied to **current** behavior showing that Petitioner still presents an unreasonable risk at this time. A rule requiring the presence of in-prison adverse behavior to justify a denial based on the crime simply recognizes what the 9th Circuit in *Biggs* alluded to when it talked of the rehabilitative goals of the system, and the need to take into consideration that a person can rehabilitate themselves. This seems to be missing from the Board's current agenda and policy. This denies to Petitioner the process to which he is constitutionally due.

At this point, Petitioner has been incarcerated over 23 years (including pre- & post-conviction credit). His programming clearly shows his full rehabilitation. In drawing the line as to when a denial becomes arbitrary, that line has definitely been crossed in this case, as the Board cannot present factual findings showing a continued risk of danger based on the rehabilitative evidence presented. To the contrary, the in-prison facts are exclusively positive.

As *Ramirez* noted (*Ramirez*, 94 Cal.App.4th at 549), the paroling authority must do more than merely commend Petitioner for the hard work done to rehabilitate himself while in prison. They must actually consider these factors "as... circumstance[s] tending to show his suitability for parole." *Ramirez* supra 94 Cal.App.4th at 571-72 [emphasis in original]. Of course, all the

Board did with petitioner's extensive accomplishments was to brush them aside with several terse lines and issue superficial compliments. Obviously, no serious consideration was ever given to Petitioner's outstanding programming. Yet, the Biggs rule is clear that if an inmate "continue[s] to demonstrate exemplary behavior and evidence of rehabilitation, denying him a parole date simply because of the nature of [his] offense and prior conduct would raise serious questions involving his liberty interest in parole". *Biggs v. Terhune*, supra, 334 F.3d at 916. Here, the evidence of actual rehabilitation is beyond dispute.

The Boards inability to find anything in his current programming, demeanor or psychological condition to justify a finding of current dangerousness, the Board continuously falls back on the immutable and unchanging facts, of the crime, to base its findings of unsuitability.

Again as noted above, wherever one draws the line as to when the reliance on the unchanging facts of the commitment offense becomes a violation of due process in the abstract, under the facts here after 17 years, it clearly has passed here. Thus, the Board must do more than simply commend Petitioner for his efforts and accomplishments, and must consider them as favoring parole in evaluating suitability. *Ramirez*, supra, at 572. The Board must do this even if the factors of the commitment offense in the abstract can be said to be sufficient to deny petitioner parole.

Petitioner asserts that he has continued to be a **model** inmate, yet, continues to be deprived the benefits of his exemplary rehabilitation by the California Board of Parole

Hearings. The only real issue at a parole hearing is whether the inmate **currently** poses an unreasonable risk of danger to the public if paroled. This must be determined by an inmates post-conviction evidence of rehabilitation. petitioner has met every prerequisite condition that warrants a finding of suitability. Because there is no evidence to support a finding that Petitioner poses a current threat to public safety of any magnitude, let alone an unreasonable level of threat, the decision denying parole can not be sustained.

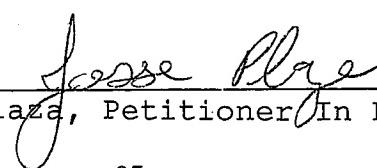
CONCLUSION

The Parole Board's decision was arbitrary and capricious. Petitioner did not receive fair hearing from the Board of Parole Hearings, nor will he ever.

The Court must order Petitioner released or at the very least, direct the Board of Parole Hearings to issue a decision within ten days granting Petitioner parole, setting his term as prescribed by the Legislature and the Statutes.

Based on the foregoing reasons and the entire file herein, Petitioner submits that the hearing was a sham and a farce in violation of the intent of the Legislature when it enacted Penal Code §3041 et seq. 30 years ago.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 15 day of February 2007, Correctional Training Facility, Soledad, Ca 93960-0689.



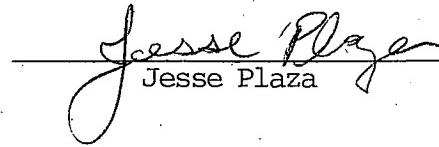
Jesse Plaza, Petitioner In Pro Per

1 PRAYER FOR RELIEF
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- 1 1. Issue an Order to Show Cause on an expedited basis directing
- 2 Respondent to file a Return pursuant to Rule 4.551, California
- 3 Rules of Court;
- 4 2. Issue a Writ of Habeas Corpus;
- 5 3. Order Respondent to provide Petitioner with reasonable discovery;
- 6 4. Conduct an Evidentiary Hearing;
- 7 5. Declare the rights of the parties;
- 8 6. Order injunctive relief;
- 9 7. Appoint Counsel;
- 10 8. Issue an order directing Petitioner released on parole;
- 11 9. Direct Respondent to release Petitioner forthwith upon the
- 12 granting of his release on parole;
- 13 10. Issue an Order directing Petitioner released on his own
- 14 recognizance or on reasonable bail; and
- 15 11. Grant all other relief necessary to promote the ends of justice.

Dated: 2-15-07

Respectfully submitted


Jesse Plaza

In Pro per

8. Did you appeal from the conviction, sentence, or commitment? Yes. No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

California Court of Appeals

b. Result: denied

c. Date of decision: unknown

d. Case number or citation of opinion, if known: unknown

e. Issues raised: (1) n/a

(2)

(3)

f. Were you represented by counsel on appeal? Yes. No. If yes, state the attorney's name and address, if known:

unknown

9. Did you seek review in the California Supreme Court? Yes. No. If yes, give the following information:

a. Result: denied

b. Date of decision: unknown

c. Case number or citation of opinion, if known: unknown

d. Issues raised: (1) n/a

(2)

(3)

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

n/a

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

As of May 1, 2004, Exhaustion of the Administrative Appeal Process has been

eliminated. Title 15 regulations governing section 2050-2056 has been repealed.

b. Did you seek the highest level of administrative review available? Yes. No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? Yes. If yes, continue with number 13. No. If no, skip to number 15.

13. a. (1) Name of court: _____

n/a

(2) Nature of proceeding (for example, "habeas corpus petition"): _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

b. (1) Name of court: _____

n/a

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

n/a

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

16. Are you presently represented by counsel? Yes. No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? Yes. No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

2-15-07


(SIGNATURE OF PETITIONER)

**PROOF OF SERVICE BY MAIL
BY PERSON IN STATE CUSTODY
(C.C.P. SS 1013(A), 2015.5)**

I, JESSE PLAZA, declare:

I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterrey, State of California. My prison address is:

JESSE PLAZA, CDCR #: H-12371
CORRECTIONAL TRAINING FACILITY
P.O. BOX 689, CELL #: F-338U
SOLEDAD, CA 93960-0689.

On FEB. 18, 2007, I served the attached:

PETITION FOR WRIT OF HABEAS CORPUS

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

LOS ANGELES SUPERIOR COURT
CRIMINAL COURT BUILDING
210 W. Temple Street
Los Angeles, CA 90012

OFFICE OF THE ATTORNEY GENERAL
RONALD REAGAN BUILDING
300 S. Spring Street
Los Angeles, CA 90099-9126

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 2-15-07.

Jesse Plaza

Declarant

EXHIBIT A

INITIAL PAROLE CONSIDERATION HEARING
STATE OF CALIFORNIA
BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration)
Hearing of:) CDC Number H-12371
JESUS PLAZA)
-----)

INMATE
COPY

CORRECTIONAL TRAINING FACILITY
SOLEDAD, CALIFORNIA

MAY 1, 2006

PANEL PRESENT:

ARCHIE JOE BIGGERS, Presiding Commissioner
ROLANDO MEJIA, Deputy Commissioner

OTHERS PRESENT:

JESUS PLAZA, Inmate
LAWRENCE MORRISON, Deputy District Attorney
KATERA E. RUTLEDGE, Attorney for Inmate

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____ No See Review of Hearing
_____ Yes Transcript Memorandum

Ruby M. Dougherty, Peters Shorthand Reporting

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--oo--

1 P R O C E E D I N G S

2 DEPUTY COMMISSIONER MEJIA: We're on
3 record.

4 PRESIDING COMMISSIONER BIGGERS: Okay.

5 This is initial parole consideration hearing for
6 Jesus Plaza, P-L-A-Z-A, CDC No. H-12371. We're
7 located at the Correctional Training Facility in
8 Soledad. Inmate was received on October 9, 1991
9 from Los Angeles County. The life term began on
10 October 9, 1991 and the minimum eligible parole
11 date is January 25th, 2007. The controlling
12 offense for which the inmate has been committed
13 is murder case number -- first-degree murder
14 with a weapon. Case No. is VA004108. That's a
15 violation on criminal code PC187. The inmate
16 received a term of 25 years to life, with a
17 minimum eligible parole date of 1/25/07. Now
18 this hearing's being tape-recorded and for the
19 purpose of voice-identification each of us will
20 state our first and last name, spelling our last
21 name. When we get to you Mr. Plaza, if you
22 would please give us your CDC number after you
23 spell your last name. I will start and move to
24 my left. My name is Archie Joe Biggers,
25 B-I-G-G-E-R-S, and I'm a Commissioner.

26 DEPUTY COMMISSIONER MEJIA: Rolando
27 Mejia, M-E-J-I-A, Deputy Commissioner.

1 DEPUTY DISTRICT ATTORNEY MORRISON:

2 Lawrence Morrison, M-O-R-R-I-S-O-N, Los Angeles
3 District Attorney.

4 ATTORNEY RUTLEDGE: Katera E. Rutledge,
5 R-U-T-L-E-D-G-E, attorney for Mr. Plaza.

6 INMATE PLAZA: My name is Jesus Plaza,
7 last -- CDC number is H-12371.

8 [Recording equipment malfunction, placement of
9 equipment, background noise, and volume of
10 participants resulted in indiscernible content.]

11 PRESIDING COMMISSIONER BIGGERS: Okay.

12 Thanks to all of you. Mr. Perez is there an ADA
13 statement that was passed over there to you? Do
14 you see that? It should have been right next
15 to--

16 INMATE PLAZA: (Indiscernible).

17 PRESIDING COMMISSIONER BIGGERS: -- would
18 you please read that out loud for us?

19 INMATE PLAZA: "The Americans with
20 Disability Act, ADA, is a law to
21 help people with disabilities.
22 Disabilities are problems that
23 make it harder for some people to
24 see, hear, breathe, talk, walk,
25 learn, think, work, or take care
26 of themselves than it is for
27 others. Nobody can be kept out of

1 public places or activities
2 because of a disability. If you
3 have a disability you have the
4 right to ask for help to get ready
5 for your BPT hearing, get to the
6 hearing, talk, read forms and
7 papers, and understand the hearing
8 process. BPT will look at what
9 you ask for to make sure that you
10 have a disability that is covered
11 by the ADA, and that you have
12 asked for the right kind of help.
13 If you do not get help or if you
14 don't think you got the kind of
15 help you need, ask for a BPT 1074
16 Grievance Form. You can also get
17 help to fill it out."

18 **PRESIDING COMMISSIONER BIGGERS:** All
19 right. Do you understand what that means Mr.
20 Plaza?

21 **INMATE PLAZA:** Yes, I do.

22 **PRESIDING COMMISSIONER BIGGERS:** And what
23 does it mean in your own words please.

24 **INMATE PLAZA:** In my own words I believe
25 it's saying if I have any disability or need
26 help during this hearing I have the right to
27 have those provided for me.

1 PRESIDING COMMISSIONER BIGGERS:

2 (Indiscernible) we're talking about things like
3 hearing, eye -- do you wear glasses?

4 INMATE PLAZA: No.

5 PRESIDING COMMISSIONER BIGGERS: Okay.

6 Do you have any hearing impairment?

7 INMATE PLAZA: No, I don't.

8 PRESIDING COMMISSIONER BIGGERS: And you
9 can walk without any problems?

10 INMATE PLAZA: Yes.

11 PRESIDING COMMISSIONER BIGGERS: Okay.

12 Have you ever been included in the Triple CMS or
13 EOP Program?

14 INMATE PLAZA: Never.

15 PRESIDING COMMISSIONER BIGGERS: Okay.

16 So you don't suffer from any disability that
17 would prevent you from participating in today's
18 hearing?

19 INMATE PLAZA: Not at all.

20 PRESIDING COMMISSIONER BIGGERS: Counsel,
21 do you feel that your client's ADA rights have
22 been met? Ms. Rutledge?

23 ATTORNEY RUTLEDGE: Yes, Sir.

24 PRESIDING COMMISSIONER BIGGERS: Thank
25 you. This hearing is being conducted pursuant
26 to Penal Code Section 3041 and 3042 and the
27 rules and regulations of the Board of Prison

1 Terms governing parole consideration hearings
2 for life inmates. The purpose of today's
3 hearing is to consider the number and the nature
4 of the crimes you were committed for, your prior
5 criminal and social history, your behavior and
6 programming since your commitment. We have had
7 the opportunity to review your Central File, and
8 you will be given the opportunity to correct or
9 clarify the record. We will reach a decision
10 today, and find -- and inform you whether or not
11 we find you suitable for parole and the reasons
12 for our decision. If you are found suitable for
13 parole, the length of your confinement will be
14 explained to you. Before we go any further, I
15 want to advise you that we expect you to be
16 fully honest with us today, especially with this
17 being your initial hearing. So in the event
18 that you don't get a date today, this here will
19 form the foundation for all future hearings.

20 **INMATE PLAZA:** I (indiscernible).

21 **PRESIDING COMMISSIONER BIGGERS:** Any
22 false statement you make today could have an
23 adverse effect on your ability to get a date at
24 a later time in the event that you don't get a
25 date today. Nothing that happens here today
26 will change the findings of the Court. We are
27 not here to retry your case. We are here to

1 determine if you are suitable for parole. Do
2 you understand that?

3 **INMATE PLAZA:** I understand.

4 **PRESIDING COMMISSIONER BIGGERS:** The
5 hearing will be conducted in two phases. I will
6 discuss with you the crime you were committed
7 for, your prior criminal and social history.
8 Deputy Commissioner Mejia will talk to your
9 about parole plans, letters of support and
10 opposition, your counselor's report and your
11 psychological evaluation. Once that is
12 concluded, both Commissioners, the District
13 Attorney, and your attorney will ask you
14 questions. Questions from the District Attorney
15 shall be asked through the Panel and your
16 answers should be directed to the Panel. Before
17 we recess for deliberation, the District
18 Attorney, your attorney, and you will be given
19 the opportunity to make a final statement
20 regarding your suitability, followed by
21 statements -- if we had victims, it would be --
22 (indiscernible) follow with the victims, but
23 since we don't have any we don't worry about
24 that one. California Code of Regulations states
25 that regardless of time served a life inmate
26 shall be found unsuitable for and denied parole
27 if in the judgment of the Panel the inmate would

1 pose an unreasonable risk of danger to society
2 if released from prison. You have certain
3 rights. Those rights include the right to a
4 timely notice of this hearing, the right to
5 review your Central File. Did you review your
6 Central File?

7 **INMATE PLAZA:** Yes.

8 **PRESIDING COMMISSIONER BIGGERS:** And the
9 right to present relevant documents. Ms.
10 Rutledge, do you believe that your client's
11 rights have been met.

12 **ATTORNEY RUTLEDGE:** Yes.

13 **PRESIDING COMMISSIONER BIGGERS:** Okay.
14 Thank you, ma'am. You have an additional right
15 to be heard by an impartial Panel. Do you have
16 any objection to the Panel members?

17 **INMATE PLAZA:** No, none at all.

18 **PRESIDING COMMISSIONER BIGGERS:** Okay.
19 All right. I'm going to ask Ms. Rutledge, do
20 you have any objections to the Panel
21 (indiscernible)?

22 **ATTORNEY RUTLEDGE:** No, Sir.

23 **PRESIDING COMMISSIONER BIGGERS:** Thank
24 you. You will receive a written copy of our
25 tentative decision today. That decision becomes
26 effective within 120 days. A copy of the
27 decision and a copy of the transcript will be

1 sent to you, and you will have 90 days from that
2 date to appeal if you so desire. Now, I need to
3 let you know that the Board has eliminated its
4 appeals process. If you disagree with anything
5 that happens in today's hearing, you have the
6 right to go directly to the Court with your
7 complaint.

8 **INMATE PLAZA:** I understand.

9 **PRESIDING COMMISSIONER BIGGERS:** Okay,
10 thank you. You are not required to admit your
11 offense or discuss your offense. However, this
12 Panel does accept the findings of the Court to
13 be true. Do you understand that?

14 **INMATE PLAZA:** Yes, I (indiscernible).

15 **PRESIDING COMMISSIONER BIGGERS:** Okay,
16 thank you. I'm gonna pass a -- over to your
17 attorney and then to the District Attorney what
18 I've have marked as Exhibit One so that we can
19 make sure that we're all using -- on the same
20 set of documents.

21 **DEPUTY DISTRICT ATTORNEY MORRISON:**

22 District Attorney has all the documents, thank
23 you.

24 **ATTORNEY RUTLEDGE:** The -- Mr. Plaza, the
25 defense has all (indiscernible).

26 **PRESIDING COMMISSIONER BIGGERS:** Thank
27 you, ma'am. Thank you, sir. Commissioner

1 Mejia, is there any confidential material in the
2 file?

3 DEPUTY COMMISSIONER MEJIA: No. No
4 confidential information.

5 PRESIDING COMMISSIONER BIGGERS: Okay.

6 Are any additional documents to be submitted?

7 ATTORNEY RUTLEDGE: I (indiscernible) we
8 did submit --

9 PRESIDING COMMISSIONER BIGGERS: And I
10 read those (indiscernible) read the statement
11 into the record, because I want to make sure it
12 he gets into the record. I read, I think it was
13 the last two pages that had to do with matrix
14 and all the other stuff in there -- but I -- and
15 I -- but want to get it on record, so -- to
16 make sure that it is in the transcript.

17 ATTORNEY RUTLEDGE: Do you want me to
18 read it or him to do that?

19 PRESIDING COMMISSIONER BIGGERS: It
20 doesn't matter, which ever you prefer.

21 ATTORNEY RUTLEDGE: This was taken from
22 -- Mr. Plaza had submitted to the Board a
23 memorandum of evidence and law in support of
24 parole suitability and this is directed to the
25 Board.

26 "Introduction, the California Code
27 of Regulations Title XV Division

1 Two hereafter XV Section 2245,
2 states in part, 'The prisoner is
3 responsible for bringing to the
4 attention of the hearing Panel any
5 issues pertaining to his rights
6 under this article or any failure
7 to comply with these rules. A
8 prison may waive any of these
9 rights. Any such waiver shall be
10 documented.' I wish to bring to
11 the attention of this Panel at
12 this time that I do have the right
13 to present this document at this
14 hearing to have it entered into
15 the record. Moreover, the Panel
16 must --"

17 That's moot since the Panel's accepting it. Is
18 that correct?

19 **DEPUTY COMMISSIONER MEJIA:** Yes, it is.

20 **ATTORNEY RUTLEDGE:** Okay. In the third
21 paragraph, my client submits this memorandum
22 because he does not wish to intentionally or
23 unintentionally waive any of his rights under
24 the law, and that he wants that all evidence in
25 support of finding suitability be stated for the
26 records and for purposes of appeal if necessary.

27 **PRESIDING COMMISSIONER BIGGERS:** Before

1 you go any further. Normally, everything that
2 we do, that's why it's on record. So, I just
3 want to make sure that you now understand that
4 we -- our job is to make sure that we do
5 everything under due process and we are aware of
6 everything that happens in Title XV.

7 **INMATE PLAZA:** That's right.

8 **PRESIDING COMMISSIONER BIGGERS:** Okay?

9 So, go ahead, ma'am, please.

10 **ATTORNEY RUTLEDGE:** Moving on to the
11 memorandum incorporates the following -- relies
12 upon the Court rulings.

13 "InRe Rosencrance,
14 (indiscernible); InRe Rosencrance
15 for LA County Superior Court, Case
16 No. AH10298; InRe Caswald,
17 210DJDJR10845; InRe McWillion,
18 U.S. Court of Appeals for the 9th
19 Circuit, Case No. 0055182; InRe
20 Ramirez, 9th Circuit Court of
21 Appeals, Case No. A0092699; InRe
22 Biggs, U. S. Court of Appeals,
23 Case No. VH002016; InRe Deluna,
24 126 Appellate Court, 585; InRe
25 Low, 130 Appellate Court, 1418 --"

26 **PRESIDING COMMISSIONER BIGGERS:** Excuse
27 me, what was that? What was the -- what's the

1 relation of the Low case in this hearing?

2 **ATTORNEY RUTLEDGE:** How are we applying
3 the Low case to this hearing? This is being
4 presented by my client; I have not read the Low
5 case.

6 **DEPUTY DISTRICT ATTORNEY MORRISON:** Well,
7 I have a -- I have a question (indiscernible) if
8 I may. The inmate can present anything he
9 wants, but this sounds like legal arguments.
10 The inmate has an attorney -- he's gonna have an
11 attorney -- he can make whatever arguments he
12 wants if he gonna represent himself then he can
13 make legal arguments. But he doesn't get to
14 make legal arguments and have an attorney.

15 **ATTORNEY RUTLEDGE:** Yes, he does.

16 There's nothing -- sometimes he can have an
17 attorney --

18 **PRESIDING COMMISSIONER BIGGERS:** Excuse
19 me. What I'm doing right now is allowing him to
20 read his document into the file. When we start
21 talking about the opposing statements and
22 getting into all the others, then that's when I
23 will put a stop to that. But I want to get this
24 in the file, and I have something to say once
25 you finish.

26 **ATTORNEY RUTLEDGE:** And I would -- I
27 would remind the Panel that under Title XV the

1 people have no standing to object to anything
2 that the inmate does.

3 **PRESIDING COMMISSIONER BIGGERS:** Exactly.

4 **ATTORNEY RUTLEDGE:** Thank you. All
5 right. So -- "InRe Shapudis, 135 Appellate
6 Forth 217 at 227; Irons versus Carey 408 F
7 Third, 1165 9th Circuit." Now Page Two goes to
8 the commitment offense so --

9 **PRESIDING COMMISSIONER BIGGERS:** You can
10 skip that one. In fact, I think you can skip
11 the last three pages, I just wanted to get those
12 things on the record for you (indiscernible)
13 others because what I wanted to let you know sir
14 is that those cases are a matter of law, and you
15 can use those any times when you appeal if for
16 some reason you don't get a date. But there are
17 a couple that you forgot to mention. One of
18 those is Dannenberg, and we'll talk about that a
19 little later on. I would appreciate -- I think
20 you've done a superb job of putting this package
21 together. My only comment on that is I think
22 sometimes that you don't who -- by going in
23 there and doing certain things, there's a
24 difference between shall, will, and can't.

25 **INMATE PLAZA:** I understand.

26 **PRESIDING COMMISSIONER BIGGERS:** Okay.

27 So. All right.

1 **ATTORNEY RUTLEDGE:** Can I -- there's an
2 -- I still have to lodge a couple of objections
3 whenever the Panels --

4 **PRESIDING COMMISSIONER BIGGERS:** No
5 problem. So those are the additional documents.
6 Now, you say you have some preliminary
7 objections? What are they now?

8 **ATTORNEY RUTLEDGE:** Well, our first
9 objection would be -- well, we would ask that
10 the Panel -- under 2236 my client will be
11 discussing everything but the commitment offense
12 with the Panel. We ask that the people not be
13 allowed to refer to him not discussing the case,
14 and that again we're just reiterating that the
15 people don't have standing to object to any of
16 our statements and may not advise the Panel on
17 the law, and that would be all aside from what
18 would be in the package.

19 **DEPUTY DISTRICT ATTORNEY MORRISON:**

20 (Indiscernible) recommend that (indiscernible)
21 represents the citizen of Los Angeles, it's part
22 of public comment that we're entitled to make on
23 any subject regarding suitability for parole.

24 **ATTORNEY RUTLEDGE:** You can during your
25 closing. Other than that you have no standing.

26 **PRESIDING COMMISSIONER BIGGERS:** She's
27 right about that. You do have the right to do

1 that in Closing Statements (indiscernible). He
2 can in fact though ask questions. If your
3 client elects not to answer them that's
4 something entirely different, but he does have
5 the right to ask questions as well.

6 **ATTORNEY RUTLEDGE:** Of my client,
7 correct. Yes. Okay.

8 **PRESIDING COMMISSIONER BIGGERS:** Are
9 there any other preliminary objections?

10 **ATTORNEY RUTLEDGE:** No, Sir.

11 **PRESIDING COMMISSIONER BIGGERS:** Okay. I
12 assume from what you just told me that the
13 inmate will be speaking to us about everything
14 but the crime?

15 **ATTORNEY RUTLEDGE:** Yes.

16 **PRESIDING COMMISSIONER BIGGERS:** Okay.
17 Would you raise your right hand please, Mr.
18 Plaza. Do you solemnly swear or affirm that the
19 testimony you give at this hearing will be the
20 truth and nothing but the truth?

21 **INMATE PLAZA:** I do.

22 **PRESIDING COMMISSIONER BIGGERS:** Thank
23 you. I'm gonna read into the record from the
24 Appellate decision the facts of the committing
25 offense.

26 "On May 26, 1990, Mr. Plaza was an
27 active member of the King Cobra

1 juvenile gang. (Indiscernible)

2 Silva, S-I-L-V-A, Mr. Plaza's
3 co-arrestee was also an active
4 member of the King Cobras.

5 Patrick Littlebull,

6 L-I-T-T-L-E-B-U-L-L, the victim,
7 was a member of the Bell Garden
8 (phonetic) --" is that local --

9 **INMATE PLAZA:** It's always been
10 miss-spelled, but it's supposed to be locos as
11 in crazy.

12 **PRESIDING COMMISSIONER BIGGERS:** Locos.

13 **INMATE PLAZA:** Locos.

14 **PRESIDING COMMISSIONER BIGGERS:** Locos.

15 **INMATE PLAZA:** Yeah.

16 **PRESIDING COMMISSIONER BIGGERS:** Okay.

17 "-- a rival juvenile gang. Fifty-nine hundred
18 block of Loveless (phonetic) Street was a known
19 hangout of the Bell Garden Locos."

20 **INMATE PLAZA:** There you go.

21 **PRESIDING COMMISSIONER BIGGERS:** "On May
22 26, 1990 at around 10:00 p.m.

23 Rosario Quevedo, Q-U-E-V-E-D-O,
24 and her sister, Martha -- and I'll
25 spell the last name --
26 P-A-L-A-C-I-O-S, returned from
27 church with their children and

1 parked their car in front of their
2 apartment at 5940 Loveless Street.
3 Quevedo, Q-U-E-V-E-D-O, noticed
4 some individuals standing and
5 talking to each other on the
6 sidewalk in front of the car. She
7 also saw a car approaching from
8 the opposite direction with its
9 lights off and stop across the
10 street. Rosario and Palatono --
11 P-A-L-A-C-I-O-S -- then heard
12 gunshots. Quevedo panicked and
13 drove away. When they returned a
14 short time later, they saw the
15 victim lying face down in the
16 street in front of the apartment
17 building. Jesus Zamora,
18 Z-A-M-O-R-A, made a pizza delivery
19 for Dominoes Pizza about 10:00
20 p.m. that evening at 5918 Loveless
21 Street. After delivering the
22 pizza he pulled into the driveway
23 at 5918 Loveless Street to write
24 in his delivery book. As he was
25 writing, he heard the sound of
26 gunfire and the sound of a car
27 coming rapidly in his direction.

1 He saw a car traveling on Loveless
2 Street without the headlights on.
3 The car passed Zamora and turned
4 the car, straddling the curve.
5 The lights of the car then came
6 on, and Zamora saw the number 33
7 on the license plate. He also
8 noted that the car was a gray
9 Caprice. He later related his
10 observations to Bell Garden Police
11 Officer Reuben Musquiz,
12 M-U-S-Q-U-I-Z. Officer Musquiz
13 then broadcast a description of
14 the gray Caprice over the police
15 radio. Around 10:50 p.m., Bell
16 Police Officer Baley Hooper,
17 H-O-O-P-E-R, observed a silver
18 Caprice with 33 on it as the last
19 two numbers on the license plate."
20 And then I'm going to skip down and say -- well,
21 let me read this in too.
22 "-- proceeded westbound on
23 Florence Avenue near the 710
24 Freeway bridge. He radioed for
25 assistance and followed the car
26 into a driveway. Plaza, who was
27 driving, and passenger Danny Silva

1 exit the vehicle. They were
2 detained and subsequently
3 arrested. Brown paper bags were
4 placed on the hands of Plaza and
5 Silva so they -- that they -- be
6 tested for gunshot residue.

7 Analysis residue from a pellet in
8 Silva's hand indicate that Plaza
9 and Silva had either shot a gun,
10 handled a gun, or had been within
11 with two (indiscernible) feet of a
12 gun as it was fired."

13 Okay. That's enough for the record. And since
14 you're not gonna be talking about the crime
15 itself -- and counsel if I touch on an area that
16 you want to object to, that's fine, I need to
17 ask a couple of things though. At one time you
18 denied your involvement.

19 INMATE PLAZA: Yes.

20 PRESIDING COMMISSIONER BIGGERS: Okay.

21 When did you change that?

22 INMATE PLAZA: I'd have to say about an
23 hour into the interrogation.

24 PRESIDING COMMISSIONER BIGGERS: An hour
25 into the interrogation?

26 INMATE PLAZA: Yes.

27 PRESIDING COMMISSIONER BIGGERS: Well, I

1 was looking at the Appellate Decision and it
2 indicated -- I thought it looked like it was a
3 little bit longer than that.

4 **ATTORNEY RUTLEDGE:** He maintains he was
5 the driver of the vehicle, and they never --
6 there were two people. Both people found in the
7 car had gunshot residue. There was a third
8 person that was never tried.

9 **PRESIDING COMMISSIONER BIGGERS:** Never
10 tried, but yeah there were two. The two that
11 had the residue was Mr. Plaza and Mr. Silva; is
12 that correct?

13 **INMATE PLAZA:** That's correct.

14 **PRESIDING COMMISSIONER BIGGERS:** Okay.

15 Can you tell me how you got the residue on your
16 hands?

17 **INMATE PLAZA:** Yes, I handled the gun
18 after it was fired plus I was in the vicinity of
19 the shots being fired.

20 **PRESIDING COMMISSIONER BIGGERS:** Within
21 two to four feet is what you're saying?

22 **INMATE PLAZA:** Yes, Sir.

23 **ATTORNEY RUTLEDGE:** Okay, I think we're
24 getting into the commitment offense --

25 **PRESIDING COMMISSIONER BIGGERS:** Okay.

26 At one time you talked about the (indiscernible)
27 you requested it be turned to a manslaughter

1 (indiscernible), right?

2 **INMATE PLAZA:** My lawyer did, yes.

3 **PRESIDING COMMISSIONER BIGGERS:** Yes.

4 And that was shot down by the Appellate
5 Decision. Are you still a member of that King
6 Cobra gang?

7 **INMATE PLAZA:** I was never technically a
8 member, but I was an associate. I hung around
9 with gang members, to be totally honest. I hung
10 around with several different gang members.
11 People that I hung around with were from
12 different gangs.

13 **ATTORNEY RUTLEDGE:** (Indiscernible).

14 **INMATE PLAZA:** Oh, being born and raised
15 in East LA there's gangs all around.

16 **PRESIDING COMMISSIONER BIGGERS:** Yeah,
17 there are -- some gangs are not as violent as
18 otters. There are some gangs that are just
19 locals that hang out, too.

20 **INMATE PLAZA:** Not that I know of.

21 **PRESIDING COMMISSIONER BIGGERS:** Okay.
22 Well, I'm familiar with LA. Not all of them are
23 Bloods, Crips, or whatever names that they have.
24 You indicated that you have spent a lot of time
25 hanging around those people. Were you aware
26 that -- well, that's getting back into the
27 crime. Were you aware that -- the night in

1 question, were you in with some of those known
2 gang members?

3 **INMATE PLAZA:** Yes.

4 **PRESIDING COMMISSIONER BIGGERS:** Did you
5 have any idea what was going to take place?

6 **ATTORNEY RUTLEDGE:** We would -- that
7 would -- sorry, I have to object to --

8 **PRESIDING COMMISSIONER BIGGERS:** All
9 right.

10 **ATTORNEY RUTLEDGE:** But we would accept
11 the --

12 **PRESIDING COMMISSIONER BIGGERS:** Findings
13 of the

14 **ATTORNEY RUTLEDGE:** -- Appellate --

15 **PRESIDING COMMISSIONER BIGGERS:**

16 Appellate Decision. Okay.

17 **ATTORNEY RUTLEDGE:** Yes.

18 **PRESIDING COMMISSIONER BIGGERS:** All
19 right. Then I will go and just look and see
20 what else I think is -- talking about your
21 priors.

22 **DEPUTY DISTRICT ATTORNEY MORRISON:**

23 Excuse me, Commissioner. I'm sorry, I may have
24 missed it with all of this discussion. But did
25 the Chair read the official version of the crime
26 into the --

27 **PRESIDING COMMISSIONER BIGGERS:** I read

1 it from the Appellate Decision. Yes, it is.

2 DEPUTY DISTRICT ATTORNEY MORRISON:

3 Because the Appellate Decision is pretty
4 lengthy.

5 PRESIDING COMMISSIONER BIGGERS: Yeah,
6 and I read that in --

7 DEPUTY DISTRICT ATTORNEY MORRISON:

8 That's right. Okay.

9 ATTORNEY RUTLEDGE: It's probably why you
10 fell asleep during that part.

11 PRESIDING COMMISSIONER BIGGERS: All
12 right -- we're not going to have that now.

13 ATTORNEY RUTLEDGE: Just teasing.

14 PRESIDING COMMISSIONER BIGGERS: I know.
15 We're going to keep everything on the up and up
16 here. Okay. And did you have a juvenile
17 history, because when I went through this I
18 couldn't find anything. It says not available
19 to Probation Department as far as five years
20 after that. Did you have any juvenile history?

21 INMATE PLAZA: (Indiscernible).

22 PRESIDING COMMISSIONER BIGGERS: And the
23 only adult history that you had was -- you were
24 given 24 months probation for some vandalism --

25 INMATE PLAZA: Yes.

26 PRESIDING COMMISSIONER BIGGERS: What was
27 that about?

1 **INMATE PLAZA:** I was arrested for
2 vandalizing a store -- store property.

3 **PRESIDING COMMISSIONER BIGGERS:** Why did
4 you do that?

5 **INMATE PLAZA:** To be honest with you, I
6 was walking down the street, I was intoxicated,
7 I seen the can sitting on the floor, I picked it
8 up, what made we think I wanted to know what
9 color it was I really am not sure today while I
10 did that, but I did spray a one-inch diameter
11 dot on the wall to see what color the can was
12 and that's what I was arrested for -- a one-inch
13 diameter dot on the wall.

14 **PRESIDING COMMISSIONER BIGGERS:** And they
15 gave you two-years probation for that?

16 **INMATE PLAZA:** Yes.

17 **ATTORNEY RUTLEDGE:** It's usually three
18 years under the Penal Code.

19 **PRESIDING COMMISSIONER BIGGERS:** Yeah,
20 but that -- there had to be some extenuating
21 circumstances as to priors --

22 **DEPUTY DISTRICT ATTORNEY MORRISON:**

23 Misdemeanor probation in LA County summary
24 probation is frequently two years. Sometimes
25 for a (indiscernible) it's only one year.

26 **ATTORNEY RUTLEDGE:** But under the Penal
27 Code you don't have to justify three years. You

1 just give three years.

2 PRESIDING COMMISSIONER BIGGERS: Okay,
3 well, my question to you -- was there anything
4 else that led them to give you only two years?

5 INMATE PLAZA: I wouldn't know.

6 PRESIDING COMMISSIONER BIGGERS: Okay.

7 Let's talk a little bit about your drug -- do
8 you have -- do you have a drug history?

9 INMATE PLAZA: Yes, I do.

10 PRESIDING COMMISSIONER BIGGERS: Okay.

11 And what was your drug of choice?

12 INMATE PLAZA: Cocaine.

13 PRESIDING COMMISSIONER BIGGERS: Cocaine.

14 And it says that you began snorting cocaine
15 three times a week at the age of 16 --

16 INMATE PLAZA: Yes.

17 PRESIDING COMMISSIONER BIGGERS: -- and
18 you continued use of this of -- until age 18,
19 and you stopped at age 20.

20 INMATE PLAZA: Actually that's incorrect.
21 I never actually stopped. I just decreased for
22 a minute, and then I just elevated up until the
23 time I was arrested.

24 PRESIDING COMMISSIONER BIGGERS: Were you
25 -- the night you were arrested were you involved
26 in alcohol or cocaine or anything?

27 INMATE PLAZA: Both. Alcohol and

1 cocaine.

2 PRESIDING COMMISSIONER BIGGERS: When did
3 you start using alcohol?

4 INMATE PLAZA: I'd say age 15.

5 PRESIDING COMMISSIONER BIGGERS: You were
6 still living at home, were you not?

7 INMATE PLAZA: Yes, I was.

8 PRESIDING COMMISSIONER BIGGERS: Were
9 your parents aware that you were using cocaine
10 and getting involved in drinking?

11 INMATE PLAZA: No, not at all?

12 PRESIDING COMMISSIONER BIGGERS: How
13 could you hide that?

14 INMATE PLAZA: Well, my father'd been
15 gone since I was about four years old so he's
16 not in the picture. My mother, due to trying to
17 support me and my other siblings -- she worked
18 -- usually she had -- numerous times she usually
19 had two jobs at a time. She's work day and
20 night, so by the time she'd get home I'd already
21 be home in bed.

22 PRESIDING COMMISSIONER BIGGERS: Okay.

23 Did you -- I'll get in your social here
24 (indiscernible) in a few minutes. But I wanted
25 to find out were you -- let me go back. You
26 were talking about the cocaine usage. You
27 started using it at an early age right?

1 INMATE PLAZA: Yes.

2 PRESIDING COMMISSIONER BIGGERS: How did
3 you support yourself in getting that?

4 INMATE PLAZA: I had a job. I used to
5 work after school through the Cedar Program.

6 PRESIDING COMMISSIONER BIGGERS: Cocaine
7 is a fairly expensive drug, isn't it?

8 INMATE PLAZA: Yes, it is.

9 PRESIDING COMMISSIONER BIGGERS: Okay.
10 Were you buying it on the street?

11 INMATE PLAZA: Yes, I was.

12 PRESIDING COMMISSIONER BIGGERS: Costing
13 you a pretty penny to do that, wasn't it?

14 INMATE PLAZA: Yeah, pretty much all my
15 money.

16 PRESIDING COMMISSIONER BIGGERS: Okay,
17 and you still say that your parents did not know
18 that you were doing this?

19 INMATE PLAZA: No, they didn't.

20 PRESIDING COMMISSIONER BIGGERS: How
21 about alcohol? What was your drink of alcohol
22 that you liked?

23 INMATE PLAZA: Mainly my drink was
24 Miller.

25 PRESIDING COMMISSIONER BIGGERS: Miller?

26 INMATE PLAZA: Yes.

27 PRESIDING COMMISSIONER BIGGERS: And you

1 would take that in conjunction with?

2 INMATE PLAZA: Well, the alcohol started
3 off as a, you know, what they call a gateway
4 drug. It was the beginning of alcohol which led
5 me to the cocaine and that was pretty much the
6 two main -- my two main choices of alcohol and
7 drug of choice was cocaine.

8 PRESIDING COMMISSIONER BIGGERS: Okay.

9 Under Social Factors, you were born on February
10 the 7, 1965 to Caroline and Jessie (phonetic)
11 Plaza.

12 INMATE PLAZA: I believe there's an
13 addendum behind that -- there's a --

14 PRESIDING COMMISSIONER BIGGERS: Yeah,
15 that said he was born on 3/7/65.

16 INMATE PLAZA: That's correct, yes.

17 PRESIDING COMMISSIONER BIGGERS: Then you
18 got -- the marriage took place on 5/12/84.
19 That's your marriage, right?

20 INMATE PLAZA: Yes.

21 PRESIDING COMMISSIONER BIGGERS: Getting
22 back to your -- you've got four brothers -- four
23 sisters and a brother?

24 INMATE PLAZA: Yes.

25 PRESIDING COMMISSIONER BIGGERS: Okay.

26 Are they still -- are all of them still living?

27 INMATE PLAZA: Yes, they are.

1 PRESIDING COMMISSIONER BIGGERS: Is any
2 of them incarcerated?

3 INMATE PLAZA: No. And also if I might
4 add, two of -- the two youngest sisters are
5 actually half-sisters. They're from my dad's
6 second marriage.

7 PRESIDING COMMISSIONER BIGGERS: Okay.

8 And your wife's name is --

9 INMATE PLAZA: Guadalupe.

10 PRESIDING COMMISSIONER BIGGERS:

11 Guadalupe Falcon (phonetic)?

12 INMATE PLAZA: Yes.

13 PRESIDING COMMISSIONER BIGGERS: And you
14 married on 5/7/84, and you have three children.

15 INMATE PLAZA: That should be 5/12.

16 PRESIDING COMMISSIONER BIGGERS: You have
17 12 children?

18 INMATE PLAZA: No, no, I'm saying the
19 date. It should be 5/12; you said 5/7.

20 PRESIDING COMMISSIONER BIGGERS: Five
21 seven, and it should be 5/12.

22 INMATE PLAZA: It should be 5/12/84.

23 PRESIDING COMMISSIONER BIGGERS: Okay.

24 We'll make sure that that gets in to your
25 official record regardless of what happens here.

26 INMATE PLAZA: What was the question --

27 I'm sorry --

1 **PRESIDING COMMISSIONER BIGGERS:** Do you
2 have three kids? Three kids?

3 **INMATE PLAZA:** Yes, three children.

4 **PRESIDING COMMISSIONER BIGGERS:** And, in
5 going through your file I saw that there was a
6 letter from your wife and I'm sure that
7 Commissioner Mejia will get in to. Any problems
8 with the marriage?

9 **INMATE PLAZA:** I'd be lying if I said no.
10 Sure, we have problems. But I mean nothing that
11 we haven't gotten through.

12 **PRESIDING COMMISSIONER BIGGERS:** Well,
13 I'm talking about because of incarceration
14 (indiscernible).

15 **INMATE PLAZA:** Oh, yeah, well sure, you
16 know. It's been hard on her being the single
17 mother herself now. It was hard on me not being
18 there able to support her. When I first left, I
19 was the main source of, you know, support for
20 the house so when I first go incarcerated she
21 pretty much had to take everything on and do
22 everything on her own, you know, and she kind
23 of, you know, she felt abandoned, you know, and
24 she had every right to feel that way because she
25 had to just take over the whole household.

26 **PRESIDING COMMISSIONER BIGGERS:** Did you
27 think about that when you were associating with

**EXHIBIT A
Part 2 of 2**

1 these known gang members? That that possibility
2 -- that that could happen?

3 **INMATE PLAZA:** At the time, no, because
4 my -- my thought -- my thought process wasn't on
5 responsibility. To me responsibility was, I had
6 a job, I paid the bills, I put food on the
7 table, there was a roof over their heads, they
8 had clothes on their backs. I thought that was
9 responsibility. I didn't realize that it was a
10 lot more to responsibility than that.

11 **PRESIDING COMMISSIONER BIGGERS:** But you
12 were still -- you still had your drug habit and
13 everything else --

14 **INMATE PLAZA:** And work. Yeah, I, you
15 know, I functioned, you know, to the -- to
16 everyone else I seemed to function in a normal,
17 you know, capacity, but of course it was, you
18 know, things behind the scenes that nobody knew
19 about.

20 **PRESIDING COMMISSIONER BIGGERS:** Okay.
21 Commissioner, do you have any questions on this
22 subject?

23 **DEPUTY COMMISSIONER MEJIA:** Yeah, maybe
24 about the remorse (indiscernible).

25 **PRESIDING COMMISSIONER BIGGERS:** Go
26 ahead.

27 **DEPUTY COMMISSIONER MEJIA:** How do you

1 feel about the man who was killed?

2 **INMATE PLAZA:** I'm -- in the case of the
3 victim, I take full responsibility for the taking
4 of his life. I can understand remorse. I've
5 dealt with, you know, people dying around me in
6 the past. It's not something that I'm new to.
7 I understand that it not only affected him but
8 it affected his family. It affected friends of
9 his, society. I understand that technically we
10 all -- we all have times in our lives when we
11 wish we could turn back the clock but that's not
12 possible. But I do take full responsibility for
13 my actions.

14 **DEPUTY COMMISSIONER MEJIA:** How do you
15 feel about the death of the victim; that's what
16 I asked you.

17 **INMATE PLAZA:** The death of the victim?

18 **DEPUTY COMMISSIONER MEJIA:** Yeah, the
19 human being that was killed. How do you feel
20 about him being shot and being killed? I know
21 all the peripheral that you said -- I
22 (indiscernible) I want (indiscernible) how do
23 you feel about him?

24 **INMATE PLAZA:** I'm very remorseful for
25 the victim, for taking his life. He -- I'm very
26 sorry that it happened. It was something that
27 should not have happened. He didn't deserve

1 that, and I just can't -- I mean, there are no
2 words that'll make it better or make it go away.

3 **DEPUTY COMMISSIONER MEJIA:**

4 (Indiscernible) that's it. I really don't have
5 any questions.

6 **PRESIDING COMMISSIONER BIGGERS:** Okay.

7 Then I'll ask you to go into the Post Conviction
8 Factors, please.

9 **DEPUTY COMMISSIONER MEJIA:** Okay. This
10 is your initial parole consideration hearing Mr.
11 Plaza, and your custody history is that you were
12 initially accepted to the Wasco State Prison RC
13 in 1991. You were transferred to California
14 State Prison Folsom new facility in 1991,
15 December. You were at Wasco in October, then
16 December in 1991 you went to the Old Folsom
17 (indiscernible). Then 2/21/1992, you went to
18 CSP Calipatria, North and East. February of
19 1994 you went to Lancaster, then 12/16/1997
20 Avenal State Prison. And you went

21 (indiscernible) in 1998 of March, CTF. You had
22 a brief period of time in CMF for medical issues

23 --

24 **INMATE PLAZA:** Correct.

25 **DEPUTY COMMISSIONER MEJIA:** And
26 (indiscernible) you have several jobs, and the
27 most recent job is the (indiscernible) Porter?

1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: And you have
3 an associate (indiscernible). During your
4 incarceration you went to education
5 (indiscernible) electronics -- vocational
6 Electronics, Air Conditioning Refrigeration, Dry
7 Cleaning, Plumbing. You were a Porter and also
8 a Teacher's Aide, Infirmary Dental Assistant.
9 And, you have a high school diploma that 1983.
10 You have a 12.0 TABE score. (Indiscernible) you
11 have completed 32 units out of the Coastline
12 Community College?

13 INMATE PLAZA: Yes.

14 DEPUTY COMMISSIONER MEJIA: And, you -- I
15 see that you have really attempted to get some
16 trades -- completion of vocational trades. You
17 have completed, I think, 19 certification units
18 when it comes to Air Conditioning and
19 Refrigeration?

20 INMATE PLAZA: I've completed the whole
21 course.

22 DEPUTY COMMISSIONER MEJIA: You completed
23 that whole course?

24 INMATE PLAZA: Yes.

25 DEPUTY COMMISSIONER MEJIA: That's a
26 problem. I couldn't find a completion. I saw
27 the Certificate of Completion for the -- each

1 unit that's a component to the Refrigeration.

2 So you do have it there?

3 **INMATE PLAZA:** I believe --

4 **DEPUTY COMMISSIONER MEJIA:** That would be
5 good for the record, because I -- I saw the
6 certifications units been completed
7 (indiscernible) and how about the Data
8 Processing? I saw that you have completed 22
9 such units also?

10 **INMATE PLAZA:** Yeah, that was not a total
11 completion --

12 **DEPUTY COMMISSIONER MEJIA:** So,
13 Vocational Air Conditioning and Refrigeration --
14 you completed this?

15 **INMATE PLAZA:** Yes.

16 **DEPUTY COMMISSIONER MEJIA:** Okay. That
17 is the documentation.

18 **ATTORNEY RUTLEDGE:** (Indiscernible).

19 **DEPUTY COMMISSIONER MEJIA:** You know,
20 well you said that you completed two trades but
21 I can't find them in the file.

22 **INMATE PLAZA:** Yes, I understand the last
23 -- '95. On one of my doc hearings -- I think
24 it's right here (indiscernible). At one of my
25 doc hearings, the Commissioner went through my
26 paperwork and verified finding the --

27 **DEPUTY COMMISSIONER MEJIA:** Do you have a

1 copy of that --

2 **INMATE PLAZA:** -- chrono and the
3 certificate, but it is no longer in the file.
4 No, I do not have a copy. It's no longer in the
5 file, but the Commissioner did see it at one
6 point in time.

7 **DEPUTY COMMISSIONER MEJIA:** I saw that,
8 yeah. The doc -- was that Patterson --
9 Commissioner Patterson?

10 **ATTORNEY RUTLEDGE:** It looks -- Robert
11 Patterson, yeah. It looks to be his signature.

12 **DEPUTY DISTRICT ATTORNEY MORRISON:** This
13 (indiscernible) is that a progress hearing or
14 something?

15 **PRESIDING COMMISSIONER BIGGERS:** No --
16 Documentation Hearing. Before they go through
17 initial they give them (indiscernible).

18 **DEPUTY COMMISSIONER MEJIA:** I don't see
19 any in here. I've checked. No, I know you
20 counted -- I counted 19 units. I'm just
21 surprised that you have all these documents; you
22 don't have the -- I'm not saying that you're not
23 telling the truth, but you're so organized about
24 everything else. But the most important is what
25 you have completed. All the cert units are
26 there -- are there, and I know what you learned,
27 but the completion certificate is the most

1 important because that will count as a --

2 INMATE PLAZA: I understand.

3 DEPUTY COMMISSIONER MEJIA: -- check
4 completed. And, I cannot depend on what the
5 Deputy Commissioner saw. Maybe he had the
6 mistake of easing certification of it or
7 completion of it. I look at your file, and it's
8 like I said, you've got everything else but I
9 can't see the completion. Even on the other,
10 you know your education progress reports.
11 Nothing says (indiscernible) that you completed,
12 but I'm giving you credit for 19 certification
13 units of Air Conditioning and Refrigeration.
14 You also took some vocational Dry Cleaning,
15 which you haven't completed --

16 INMATE PLAZA: It's also a completion.

17 DEPUTY COMMISSIONER MEJIA: Oh, yeah?

18 What year did you complete that?

19 INMATE PLAZA: I believe it's -- it's on
20 that same page or the one before.

21 DEPUTY COMMISSIONER MEJIA: I guess, I
22 think you should just bring me the completion
23 chrono.

24 INMATE PLAZA: I don't have them

25 ATTORNEY RUTLEDGE: Four ten '95 is what
26 he has noted here, 4/10/95.

27 INMATE PLAZA: The last time I went

1 through the Board that -- when Patterson went
2 through the doc hearing -- when I went through
3 the doc hearing with Patterson -- '95. I had
4 the paperwork with me. When I hit Avenal I lost
5 half of my property and since then I have not
6 had --

7 **DEPUTY COMMISSIONER MEJIA:**

8 (Indiscernible) contact the vocational --
9 education where you took it -- the prison where
10 you took it, and ask for a copy of the
11 completion chrono or something to prove that you
12 have completed it. That's something you can do.

13 **ATTORNEY RUTLEDGE:** It says the
14 Refrigeration would have been 10/1/91, so that
15 was --

16 **PRESIDING COMMISSIONER BIGGERS:** Excuse
17 me, Commissioner Mejia. When you went through
18 your C-file, did you not notice that those
19 things were not there?

20 **INMATE PLAZA:** I did, but when I had seen
21 that paperwork from the Chairman the --
22 Commissioner, from the doc hearing, I thought it
23 was going to be enough since he seen it and
24 noted it on his record.

25 **PRESIDING COMMISSIONER BIGGERS:** Yeah,
26 but (indiscernible) entirely different Panel we
27 have to go by the documentation --

1 INMATE PLAZA: I understand.

2 PRESIDING COMMISSIONER BIGGERS: So,
3 whenever you review whatever make sure that you
4 have those papers.

5 DEPUTY COMMISSIONER MEJIA: Did you
6 complete your Vocational Plumbing?

7 INMATE PLAZA: No, I was never in
8 plumbing. I don't know where plumbing came
9 from.

10 DEPUTY COMMISSIONER MEJIA: Well I have
11 your diploma that -- Mr. Plaza has been unable
12 to complete any certification units in
13 vocational plumbing due to his being house in
14 Level IV. Student left in the plumbing class
15 long enough to be fully evaluated.

16 PRESIDING COMMISSIONER BIGGERS: What
17 prison was that in?

18 DEPUTY COMMISSIONER MEJIA: ASP Avenal --
19 Avenal State Prison.

20 INMATE PLAZA: I was in Wasco for, I
21 think, three months and two weeks. But I was
22 never in plumbing that I can remember. Soon as
23 I got there they came out with the new law of
24 the Close Custody -- not being, you know, not
25 being able to be in that facility they
26 transferred me over here.

27 DEPUTY COMMISSIONER MEJIA: Well, we'll

1 just leave it that you're claiming that you have
2 completed Air Conditioning and Refrigeration; is
3 that correct?

4 **INMATE PLAZA:** Dry Cleaning, Air
5 Conditioning and Refrigeration.

6 **DEPUTY COMMISSIONER MEJIA:** Dry Cleaning
7 you have completed?

8 **INMATE PLAZA:** Yes.

9 **DEPUTY COMMISSIONER MEJIA:** What year was
10 the dry cleaning, again?

11 **INMATE PLAZA:** I believe it was '94 --

12 **ATTORNEY RUTLEDGE:** The Dry cleaning was
13 -- I have completed 4/10/95, the Dry Cleaning
14 and then the Air Conditioning, 10/1/99. What
15 was the other one?

16 **DEPUTY COMMISSIONER MEJIA:** Most recent
17 (indiscernible) Home Inspection.

18 **INMATE PLAZA:** I got that.

19 **DEPUTY COMMISSIONER MEJIA:** Okay. So,
20 you're saying that you completed Air
21 Conditioning and Vocational Dry Cleaning?

22 **INMATE PLAZA:** Yes.

23 **DEPUTY COMMISSIONER MEJIA:** And Air
24 Conditioning Refrigeration? Anything else?

25 **INMATE PLAZA:** The Home Inspection, and
26 the --

27 **DEPUTY COMMISSIONER MEJIA:** I'll go

1 through that. But the actual vocational trade
2 (indiscernible) because I know you took Data
3 Processing, you did --

4 INMATE PLAZA: No, no --

5 DEPUTY COMMISSIONER MEJIA: -- assembly
6 --

7 INMATE PLAZA: Yeah, I was not in the
8 class --

9 DEPUTY COMMISSIONER MEJIA: Well, these
10 are the two major ones that you're saying that
11 you completed. Dry Cleaning, and Air
12 Conditioning and Refrigeration.

13 INMATE PLAZA: Yes.

14 DEPUTY COMMISSIONER MEJIA: And then you
15 did have -- completed the International
16 (indiscernible) institute course, 8/23/1994.

17 INMATE PLAZA: That's Dry Cleaning.

18 DEPUTY COMMISSIONER MEJIA: That's
19 connected to Dry Cleaning?

20 INMATE PLAZA: Yes.

21 DEPUTY COMMISSIONER MEJIA: Then you have
22 -- you been in AA since 1994?

23 INMATE PLAZA: Ninety-three, '93, yeah
24 somewhere around there. I don't remember the
25 exact date.

26 DEPUTY COMMISSIONER MEJIA: But the
27 chrono I saw was for '94.

1 INMATE PLAZA: Ninety-four.

2 DEPUTY COMMISSIONER MEJIA: Okay, that's
3 fine. And you're still going --

4 INMATE PLAZA: Yes.

5 DEPUTY COMMISSIONER MEJIA: -- according
6 to these last chronos, 4/1/2006. Going to the
7 (indiscernible) Labauche Literacy Program, peer
8 education program, Christian Fellowship, courses
9 in Anger Management 2005, CLN courses, you've
10 been (indiscernible) also Christian basic
11 classes, you been involved in Teddy Bear
12 (indiscernible) Teddy Bear Drive, Softball -- I
13 see all this stuff in there. But I'm concerned
14 about the major ones; AA, NA, Anger Management,
15 (indiscernible) Impact is good. Impact
16 programming -- you did some peer education
17 program (indiscernible) sexually transmitted
18 diseases, Hepatitis. You did some Bible --
19 seven-week Bible Study series Christian Living.
20 Let's see. Anything else you want to add?

21 ATTORNEY RUTLEDGE: Can I ask you,
22 Commissioner, would you -- do you have the
23 completion of AA since '94 or we don't?

24 DEPUTY COMMISSIONER MEJIA: I have the
25 chronos since 1994. What's the first one --

26 ATTORNEY RUTLEDGE: Okay, I just wanted
27 to make sure we didn't need to verify --

1 DEPUTY COMMISSIONER MEJIA: Oh, no, it's
2 good --

3 ATTORNEY RUTLEDGE: Thank you.

4 DEPUTY COMMISSIONER MEJIA: -- 1994,
5 group therapy in 1994 is the first documentation
6 of him going to AA. He did make (indiscernible)
7 time positively. He did some softball. You
8 been going to softball, playing games and you're
9 part of the team and like I said -- anything
10 else? Those are the major ones that I have.
11 I've (indiscernible) that you have completed.
12 No 115s and no 128(a)s. According to the 812
13 you do have affiliation or membership in
14 Southside King Cobra. I have no other -- other
15 than the 812 that the counselor completes every
16 year when you go to classification I have no
17 other information about him being involved in
18 any gang^{*}(indiscernible) in prison. And, now
19 we're going to go through your psych reports.
20 Of course, there's two. Since this is your
21 initial, we're gonna do -- I'm gonna read both
22 the -- this was done -- the first one was done
23 in July 21st, 1994, in Lancaster, by Dr. Isaac
24 (indiscernible), and the diagnosis -- Diagnostic
25 Impression at that time is Axis I, Poly
26 Substance Abuse; Axis II, Combat Disorder, group
27 kind; Axis III, to be evaluated by physicians;

1 Axis IV, Psycho Social Stressors, from mile to
2 moderate incarceration; Axis V, Global
3 Assessment of Functioning of 70, sentence and
4 incarceration; and according to the doctor that
5 their recommendation is -- he said at that
6 present time,

7 "In 1994 it was difficult to
8 assess the psychopathology that's
9 related to the crime. The inmate
10 does not reveal many details due
11 to the appeal process. However it
12 seems that he was involved in
13 behavior (indiscernible) by lack
14 of regard for others, drugs and
15 alcohol abuse. The inmate has
16 improved while incarcerated. He
17 made a statement 'I grew up. I'm
18 mature.' Quote unquote. It's
19 also an observation of his
20 examiner. The inmate was able to
21 express himself in a manner that
22 indicated (indiscernible)
23 increased maturity. Living in a
24 controlled setting it is too early
25 to make any assessment. However
26 his record indicates that he is
27 able to follow rules and

1 regulations and is also doing
2 above average programming.

3 (Indiscernible) recommended that
4 --"

5 [Thereupon the tape was turned over.]

6 DEPUTY COMMISSIONER MEJIA: --
7 psychological report on Mr. Plaza. "It is
8 recommended for him to continue his work
9 involving trade and other meaningful
10 activities." Then we have the most current,
11 which is -- which is dated April 15th, 2006, by
12 Dr. Macomber, M-A-C-O-M-B-E-R, and the
13 Diagnostic Impression is Axis I, Drug and
14 Alcohol Abuse by history; Axis II, no
15 personality disorder; Axis III, no physical
16 disorder; Axis IV, Life Term Incarceration, GAF
17 of 95. This --

18 "He does speak in excellent
19 English as well as Spanish.

20 Affect was appropriate. There was
21 no evidence of anxiety or
22 depression. Eye contact was good.

23 His memory was intact
24 (indiscernible) was intact. His
25 insight and self-awareness were
26 good. Assessment of
27 Dangerousness. In the potential

1 -- the prisoner's potential for
2 dangerous behavior in the
3 institution. Mr. Plaza has
4 remained entirely
5 disciplinary-free. This is
6 commendable."

7 And the Causative Factors,

8 "He said that he has disassociated
9 himself from the activity of
10 Hispanic (indiscernible). No
11 evidence that he had ever been
12 involved in riots, possession of
13 weapons, assaults and other --
14 threats of any kind. At this time
15 in this prison we have been --
16 there has been frequent riots, and
17 it is very difficult for a
18 Hispanic male to disassociate
19 himself from this activity which
20 can spontaneously occur in front
21 of him and if he doesn't get
22 involved he will receive
23 retaliation. In this case
24 remaining disciplinary-free is a
25 very difficult and commendable
26 achievement. But because of his
27 being disciplinary-free

(indiscernible) finds him definitely below average in comparison to other inmates.

(Indiscernible) considering his dangerous behavior in the community -- potential for dangerous behavior in the community, Mr. Plaza has no prior arrest for violence before the commitment offense. He did receive an arrest as an adult making a (indiscernible) spraying a one-inch diameter dot on the wall. He remains disciplinary-free in the instituting. In order to examine this prisoner's level on parole, the level of (indiscernible) was administered and it's indicated the 12 measures that assess criminal history, substance abuse history, current adjustment, and other factors to determine risk level -- this measure he obtained a score of 3.6 (indiscernible) frequencies for prison for prison inmates. This means that if 100

1 men were released on parole, he
2 would be (indiscernible) better on
3 parole than 96 of them. This is a
4 very low risk level; as a result
5 he poses no more threat to society
6 than the average citizen in the
7 community, and probably less
8 threat to society at this point in
9 his life. At the time of his
10 offense, drugs and alcohol were a
11 problem. However, at this point
12 in his life it is no longer an
13 issue therefore there are no
14 significant risk factors for this
15 case."

16 Any addition to my presentation, counsel, that I
17 missed -- you want to --

18 **ATTORNEY RUTLEDGE:** Did you mention how
19 he's helped other -- he's been like a mediator
20 for other gangs?

21 **PRESIDING COMMISSIONER BIGGERS:** Yeah, he
22 mentioned that.

23 **ATTORNEY RUTLEDGE:** Okay (indiscernible).
24 That covers everything that we had including
25 what we submitted.

26 **PRESIDING COMMISSIONER BIGGERS:** Okay,
27 we're going to parole plans. Residence plans;

1 you're living with your brother Hector Plaza.
2 Hector's residence is 353 Carla Drive, Simi
3 Valley, California, 93063, and it's got a phone
4 number here. Employment; Plaza plans on working
5 Italia International, 4175 Dragon Street, Simi
6 Valley California. I saw the letter of -- that
7 documents that. Also your brother's letter.
8 Assessment in re of Plaza's parole plans. "This
9 counselor does not foresee any problems.
10 However, it's recommended that Plaza updates his
11 parole letters prior to this hearing." I have
12 -- this letter's here (indiscernible) Dale Air
13 International from Nick Gillichbauer,
14 G-I-L-L-I-C-H-B- as in Boy A-U-E-R. It's
15 indicated that he's the General Manager of the
16 organization and he's willing to give him
17 employment in the company and he will make \$9.00
18 per hour as an assembler, working in assembly
19 with the basic hours of 7 o'clock to 3:30 p.m.
20 He will have (indiscernible) basic benefits of
21 medical and dental. And there -- some of your
22 support letters now. Jessica Plaza, dated
23 February 20, 2006, a support letter indicating
24 that -- lots of support from all the family and
25 we need to (indiscernible) his mind and heart
26 set to accomplish all the right things and not
27 wrong things, for taking time to read this

1 letter of support. She (indiscernible) says
2 that she will -- Isabelle Plaza. Your sister
3 also wrote a letter February 5, 2006. It
4 doesn't say that you can -- yeah, it's
5 supporting your release, but -- so Jessie --
6 Jesus Plaza is some brother that you're going to
7 be staying with --

8 **INMATE PLAZA:** No -- my dad is Jesus.

9 **DEPUTY COMMISSIONER MEJIA:** Your dad --
10 your dad is Jesus Plaza? There's another
11 letter, February 5, 2006. It says that you're
12 ready to go back to society. There is Hector
13 Plaza, November 12, 2005. He should be granted
14 parole. He said that you should be granted
15 parole and of course you have become a positive
16 role model for everyone. He said that you will
17 always have a home here with his wife and
18 children, and I also plan on supporting him
19 financially with whatever it takes to help you
20 get on your feet.

21 **INMATE PLAZA:** Correct.

22 **DEPUTY COMMISSIONER MEJIA:**

23 (Indiscernible) Ministry (indiscernible) these
24 are your aunts and uncles --

25 **INMATE PLAZA:** Yes.

26 **DEPUTY COMMISSIONER MEJIA:** Yolanda Plaza
27 and Arto (Phonetic) Plaza. He's a Pastor in a

1 church?

2 INMATE PLAZA: Yes, he is.

3 DEPUTY COMMISSIONER MEJIA: They will
4 provide you counseling, and will be able to
5 provide you mentors and he's also owner of a
6 construction business and would be services --
7 if he needs employment -- if you need employment
8 he will be able to give you employment.

9 INMATE PLAZA: He's also offering me to
10 stay in his home. He gave me -- it's actually
11 in this other packet -- has his phone number,
12 cell number, anything you might need to ask him
13 any further questions.

14 DEPUTY COMMISSIONER MEJIA: Helen Plaza
15 is your mother?

16 INMATE PLAZA: Yes.

17 DEPUTY COMMISSIONER MEJIA: And I have a
18 support letter here, asking that you should be
19 -- asking for your release. She also said that
20 you'll have a house to come home -- when you
21 come home. Rachel Plaza, I think is your
22 sister?

23 INMATE PLAZA: Yes, correct.

24 DEPUTY COMMISSIONER MEJIA:

25 (Indiscernible) you have her total support,
26 either financially -- financial support.
27 Christina Plaza, this is your daughter.

1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: Asking that
3 -- how old is she?

4 INMATE PLAZA: She is 19.

5 DEPUTY COMMISSIONER MEJIA: Oh. You have
6 -- she indicates that you have supported her by
7 teaching (indiscernible) classes. Thinks you
8 should be -- she's going to college. She's
9 looking for work to help (indiscernible) you,
10 any way possible. And we have Guadalupe Plaza,
11 your wife?

12 INMATE PLAZA: Yes.

13 DEPUTY COMMISSIONER MEJIA: Another
14 support letter. She says I will support him in
15 ever way that he needed for him to meet his
16 parole conditions. Isaiah Plaza, your son?

17 INMATE PLAZA: Yes.

18 DEPUTY COMMISSIONER MEJIA: He -- how old
19 is he?

20 INMATE PLAZA: He's ten.

21 DEPUTY COMMISSIONER MEJIA: Ten. And
22 there's another one, Ramona Plaza, your -- your
23 daughter, too?

24 INMATE PLAZA: That's correct.

25 DEPUTY COMMISSIONER MEJIA: Letter of
26 support. Annette Gizmalla (phonetic). That's
27 your sister?

1 **INMATE PLAZA:** Yes.

2 **DEPUTY COMMISSIONER MEJIA:** Another
3 letter of support. She says she owns her own
4 and will provide a place for you to live, help
5 you financially and help you enter your programs
6 with counseling to help you deal with everyday
7 life's events for as long as it takes. And
8 Alicia Desente Islanded (phonetic), who is this?
9 Oh, this is -- this looks like it's a different
10 one. Who's Juan Jose (indiscernible)?

11 **INMATE PLAZA:** Excuse me.

12 **ATTORNEY RUTLEDGE:** One from Mexico?

13 **DEPUTY COMMISSIONER MEJIA:** You have -- I
14 couldn't read this. 9805 Jessie Plaza, okay,
15 H12371 that's you. And, for M. Espinoza -- this
16 is a friend?

17 **INMATE PLAZA:** Yes, it is.

18 **DEPUTY COMMISSIONER MEJIA:** Okay. It's
19 another letter of support. And, Chaplain
20 (indiscernible) Lindsey -- this is the Chaplain
21 here in the prison --

22 **INMATE PLAZA:** Yes, it is.

23 **DEPUTY COMMISSIONER MEJIA:** Okay. Letter
24 of support and he said that you have been an
25 outstanding gentleman since his observation of
26 you since 1998. He was appointed Music Deacon
27 in 2003. You a musician? You play music?

1 **INMATE PLAZA:** No. No. I just direct
2 the choir.

3 **DEPUTY COMMISSIONER MEJIA:** Oh. He said
4 that you have -- he has seen phenomenal changes
5 in your life during these years and he's a
6 wonderful role model, conscious of people's
7 needs, feelings and (indiscernible). He's truly
8 an asset to our religious program here at CTF.
9 And he highly recommends consideration of the
10 Board of Prison Terms and this gentleman has --
11 he feels that you will be an outstanding asset
12 in the community. Nabia Anegias (phonetic),
13 cousin?

14 **INMATE PLAZA:** Say the name again?

15 **ATTORNEY RUTLEDGE:** Yeah, it's his
16 cousin, Nada Anegus (phonetic).

17 **DEPUTY COMMISSIONER MEJIA:** Nada Anegus,
18 another support letter.

19 **ATTORNEY RUTLEDGE:** Oh, well, you know
20 what -- it's from the Juan (indiscernible)
21 files. Poor Juan Reevus, (indiscernible) find
22 these letters.

23 **DEPUTY COMMISSIONER MEJIA:** Okay, Jessie
24 Plaza and that this is from an (indiscernible)
25 from Glenbrook, Philadelphia?

26 **INMATE PLAZA:** Yes. That's actually --
27 that's my sister --

1 DEPUTY COMMISSIONER MEJIA: Your sister?

2 INMATE PLAZA: Yes. She married -- her
3 name changed to Guerum (phonetic) but --

4 DEPUTY COMMISSIONER MEJIA: She said that
5 she will continue to support you after release
6 until you get back on your feet. She also
7 offers her home.

8 INMATE PLAZA: Yeah.

9 DEPUTY COMMISSIONER MEJIA: Guadalupe
10 Plaza, that's your wife. You said 2000 -- I
11 don't know what year was this one, but I read
12 (indiscernible). I know she's going to support
13 you. January 7th, 2005, Jesus Plaza -- your
14 father. Right?

15 INMATE PLAZA: Yes, that's correct.

16 DEPUTY COMMISSIONER MEJIA: Okay. Ramona
17 Plaza --

18 INMATE PLAZA: My daughter.

19 DEPUTY COMMISSIONER MEJIA: Your
20 daughter. Isaiah Plaza -- I read that.

21 PRESIDING COMMISSIONER BIGGERS: Some of
22 them are duplicates, some are from 2005 and some
23 are 2006.

24 DEPUTY COMMISSIONER MEJIA: Anything else
25 (indiscernible)?

26 ATTORNEY RUTLEDGE: I think you've
27 covered every letter and more and even those

1 that didn't belong to us. So, thank you.

2 DEPUTY COMMISSIONER MEJIA: And let me
3 turn this back to the Commissioner.

4 PRESIDING COMMISSIONER BIGGERS: Okay,
5 thank you. I just have one question there. I
6 see that you want to parole to your brother.
7 Why aren't you paroling back to your wife?

8 INMATE PLAZA: Oh, yes, my wife moved in
9 with her sister two years ago. Her mother'd
10 been fighting cancer. Unfortunately her mother
11 passed away November of last year, and currently
12 she's still living with her sister. But upon my
13 release, hopefully within the next, you know,
14 within three to six months, between the both of
15 us we'll have the money to put a first and last
16 down payment, you know, that you need for your
17 -- our own place so that we can live together.

18 But currently she's with her sister.

19 PRESIDING COMMISSIONER BIGGERS: Did I
20 miss anything -- talking about the, what little
21 we could talk about the crime --

22 ATTORNEY RUTLEDGE: You know, I meant to
23 point out to you -- it's up to your discretion.
24 He did provide a version in the Board Report.

25 PRESIDING COMMISSIONER BIGGERS: Yeah, I
26 saw that.

27 ATTORNEY RUTLEDGE: Other than that,

1 except for Closing Statement, we have nothing
2 else to --

3 PRESIDING COMMISSIONER BIGGERS: To talk
4 about -- okay. At this point then I'm gonna ask
5 the District Attorney if he has any questions
6 for the -- Mr. Plaza.

7 DEPUTY DISTRICT ATTORNEY MORRISON: Okay.
8 Did I hear the inmate say that he accepted
9 responsibility for the crime an hour into the
10 law enforcement interview?

11 INMATE PLAZA: Correct.

12 PRESIDING COMMISSIONER BIGGERS: Please
13 direct your answers to (indiscernible).

14 DEPUTY DISTRICT ATTORNEY MORRISON: Just
15 a moment, please. So at the time of his trial,
16 the inmate accepted full responsibility for the
17 crime.

18 INMATE PLAZA: Correct.

19 DEPUTY DISTRICT ATTORNEY MORRISON: Thank
20 you. I have no further questions. Oh, wait a
21 minute. Does the inmate know what the matrix
22 for this crime is?

23 INMATE PLAZA: I believe it's 27, 28
24 years.

25 DEPUTY DISTRICT ATTORNEY MORRISON: Thank
26 you. Nothing further.

27 PRESIDING COMMISSIONER BIGGERS: Okay,

1 thank you, sir. Ms. Rutledge.

2 **ATTORNEY RUTLEDGE:** Thank you. In
3 looking through some of your information I came
4 across a letter that's -- I wanted to ask you
5 about this letter. It's addressed to all family
6 members, loved ones, and friends of Patrick
7 Littlebull. You made an attempt to submit an
8 apology letter to his family or to the District
9 Attorney?

10 **INMATE PLAZA:** I mailed that to the
11 address indicated on the (indiscernible).

12 **ATTORNEY RUTLEDGE:** All right. And what
13 was -- I didn't see the -- what was the address?

14 **INMATE PLAZA:** Is it not on the
15 letterhead of the --

16 **ATTORNEY RUTLEDGE:** Oh, the
17 Correspondence Division in Sacramento.

18 **INMATE PLAZA:** Yes. Sacramento, yes.

19 **ATTORNEY RUTLEDGE:** Okay, and that was
20 dated June 15th, 2004. It -- I'll go ahead and
21 leave it if the Board wishes to review it, but I
22 think you wrote it on the prompting of Impact?

23 **INMATE PLAZA:** Yes, correct.

24 **ATTORNEY RUTLEDGE:** Anyway, I just wanted
25 to note that this letter -- he had written a
26 letter to the family, and what did you learn in
27 Impact?

1 **INMATE PLAZA:** Do you want to be
2 specific, or do you want me to tell you
3 everything that I learned in Impact?

4 **ATTORNEY RUTLEDGE:** Well, what changed
5 your life about Impact?

6 **INMATE PLAZA:** I'd have to say the thing
7 that was a drastic blow to me more than anything
8 was there was an individual by the name of Angie
9 Torres, her son was killed in a drive-by here in
10 Salinas and I had the opportunity to sit down
11 with her and discuss with her some of the
12 specifics of my crime and in sharing with her --
13 she had not shared with me but I shared with
14 her, and upon finishing my, you know, my talk
15 with her I introduced her -- I am a facilitator
16 of Impact -- I introduced her and I went and sat
17 down with the audience in the pews and then she
18 had her opportunity to get up and give a
19 presentation, and when she gave the presentation
20 the similarities of what happened to her son was
21 just -- it was eerie because they were just so
22 close, and afterwards we had the opportunity to
23 talk and she told me, you know, that -- she
24 said, yeah you don't know what you did when you
25 were talking to me. She says, you know, and you
26 didn't even know my story and the same for me.
27 I didn't know her story, but yet I shared with

1 her, and then upon learning her story it just --
2 it blew me away because I just realized what it
3 must have felt like to be on the other side.
4 Because in Impact that's one of the things that
5 we teach. We teach victim awareness. We teach,
6 you know, so many people are used to being on
7 the side of the crime -- on the side of, you
8 know, being the wrong one, and they never know
9 what it's like to be on the other side. Most
10 guys come out of that program with a totally
11 different vision of crime. A lot of them come
12 out and they say, wow, I never knew that I had
13 that impact on my victims. So it -- it really
14 -- it had -- it gave me a greater view, you
15 know. It wasn't just that focus on one person
16 or one individual. It opened my understanding
17 of how many -- how great an effect it had.

18 **ATTORNEY RUTLEDGE:** What about the people
19 in this room? Do you think this offense affects
20 us?

21 **INMATE PLAZA:** Oh, definitely,
22 definitely. I believe it does because -- again,
23 speaking on the ripple effect, not only did it
24 effect him, his family, his friends or his loved
25 ones, but it effected society and I realize that
26 it all trickles down and what happens is taxes,
27 money, time spent, you know, it all, you know,

1 it's a ripple effect that never reaches the
2 banks of the water.

3 **ATTORNEY RUTLEDGE:** All right. And,
4 there's a statement in the Probation Report
5 that's pretty negative about you. I mean,
6 you're in a car with gang-bangers and someone is
7 shot and killed and left to die on the street.
8 How do you go from that to the person that you
9 are today? What happened?

10 **INMATE PLAZA:** I would have to say even
11 though I chose that -- to hang around with them
12 type of people, you know, chose to be around
13 that lifestyle, in all honesty I never expected
14 to end up in prison and upon --

15 **ATTORNEY RUTLEDGE:** (Indiscernible).

16 **INMATE PLAZA:** -- honestly I didn't. But
17 upon me actually making it to prison due to bad
18 choices, it was just a slap in the face, you
19 know. It was just reality and when it hit me I
20 realized that, you know, everything that I had
21 been doing, you know, reality was what I got,
22 you know, being in prison and it wasn't
23 something that -- it just didn't sit right with
24 me, and I knew that this wasn't me, you know. I
25 didn't -- I didn't want to -- I didn't want to
26 be in prison or be one of them persons that go
27 in and out of prison, so it was a -- it was a,

1 you know, it was a rude awakening.

2 ATTORNEY RUTLEDGE: No further questions.

3 PRESIDING COMMISSIONER BIGGERS: Okay.

4 Thank you. At this point I'm going to ask Mr.
5 Morrison for his closing.

6 DEPUTY DISTRICT ATTORNEY MORRISON: The
7 District Attorney opposes parole for this
8 outrageous heinous and premeditated, vicious
9 gang attack. The inmate aided and abetted by
10 driving his vehicle over to the location of the
11 murder, parking it without its lights in what
12 the Appellate opinion described as almost lying
13 a wait attack. And Mr. Littlejohn (sic) a rival
14 gang member was shot and killed. He was not the
15 only victim. The Bell Garden's Police Report
16 which had been submitted along with the
17 Sheriff's Homicide Report note that the
18 supplemental report Officer Winfrey,
19 W-I-N-F-R-E-Y, Bell Garden PD was staffed to the
20 home of witness Collins who found a hole in his
21 south kitchen window and an adjacent hole in the
22 wallboard next to the window. The officer
23 observed a hole, approximately one inch in
24 diameter, in the lower portion of the south
25 kitchen window. Glass fragments were present on
26 the interior window sill. Another little hole
27 was present in the interior vertical portion of

1 the inside of the window frame, and the reason
2 this is significant is because the inmate with
3 his gang mentalities and his crime partner
4 sprayed bullets in a residential neighborhood.
5 One was recovered from victim Littlejohn which
6 was matched to the murder weapon which was found
7 secreted in the inmate's car. The witnesses
8 which described in the reports, noted numerous
9 shots being fired and any one of those bullets
10 could have gone through the house like it did
11 Mr. Collins home and killed another innocent
12 person in their home, minding their own
13 business. This is the kind of gang that's
14 plagued Los Angeles and all communities around
15 the state and country, senseless gang violence.
16 The motive was a retaliatory shooting because
17 the Bell Garden Locos had fired on King Cobra
18 earlier that night. The inmate should be
19 commended; he's programmed well. Not many
20 people come this long without a 115. He is on
21 the way to turn his life around, as evidenced by
22 his programming. However, the inmate still I
23 don't believe has come to grips with the crime
24 because he's still not candid with the Board.

25 ATTORNEY RUTLEDGE: Objection.

26 PRESIDING COMMISSIONER BIGGERS:

27 (Indiscernible) statement. Please continue.

1 **DEPUTY DISTRICT ATTORNEY MORRISON:** The
2 inmate said he took responsibility into the
3 Sheriff's interview, and this was documented at
4 length in the Appellate Opinion as well as the
5 statements contained in the police report. This
6 is in the Appellate Opinion, Page Four and Five,
7 which has not been read into the record yet.

8 "Deputy Sheriff Woods Danoff, D-A-N-O-F-F,
9 interviewed appellant on May 27th, 1990."

10 **ATTORNEY RUTLEDGE:** We would object to
11 the reading of the police report, just because
12 it's submitted there's still not adequate
13 foundation for it to be read into the record.

14 **DEPUTY DISTRICT ATTORNEY MORRISON:** This
15 is the Appellate Opinion summarizing the
16 evidence at trial.

17 **ATTORNEY RUTLEDGE:** I'm sorry, I thought
18 you said a Sheriff's Report.

19 **PRESIDING COMMISSIONER BIGGERS:** Go
20 (indiscernible).

21 **DEPUTY DISTRICT ATTORNEY MORRISON:** Page
22 Four in the Appellate Opinion, Deputy Sheriff
23 Woods Danoff, who is one of the two LA SD
24 homicide investigators in the case who
25 interviewed the inmate.

26 "He interviewed appellant inmate
27 on May 27th, 1990. Appellant at

1 first denied any knowledge of the
2 shooting, maintaining he had been
3 at a party at the time of the
4 shooting. After being informed
5 that his car had been identified
6 as being used in the homicide and
7 that the gun had been recovered
8 from the car, appellant admitted
9 that he drove the car that was
10 used in the shooting -- "

11 DEPUTY COMMISSIONER MEJIA: Excuse me --

12 PRESIDING COMMISSIONER BIGGERS:

13 Continue, Sir.

14 DEPUTY DISTRICT ATTORNEY MORRISON: I'll
15 repeat the last sentence, since it was --
16 "After being informed that his car
17 had been identified as being used
18 in the homicide and that the gun
19 had been recovered from the car,
20 appellant admitted that he drove
21 the car that was used in the
22 shooting and (indiscernible)
23 supplied the weapon and the car.

24 Appellant claimed that the shooter
25 was named someone -- someone named
26 Oso, O-S-O, and that he neither
27 slowed the car down nor stopped

1 the car and never turned off his
2 headlights. He claimed Oso later
3 left the car and that he later
4 picked up Silva and was giving him
5 a ride to Silva's sister's house
6 when they were stopped and
7 arrested."

8 Now, the inmate apparently is saying that's when
9 he accepted responsibility. I asked the inmate
10 specifically if he had accepted responsibility
11 in the testimony at his trial, and that is not
12 correct according to the Appellate report
13 summary of the inmate's testimony. The inmate's
14 testimony, under oath, at trial was a denial.
15 The Appellate Report continues on the same page.

16 "Appellant testified he gave a
17 ride to a man named Oso who was
18 seeking to purchase cocaine. Oso
19 told the appellant that he could
20 not use his own car because it was
21 hot. While looking for the
22 cocaine to sell, the appellant saw
23 seven to ten men running at his
24 car. The appellant accelerated
25 and hear Oso shout punks at the
26 men. Oso then pulled out a
27 revolver and fired. Appellant

1 drove away. Appellant did not
2 know that Oso had a gun until he
3 fired it. His car lights were not
4 turned off, and he slowed down
5 only for the purpose of finding
6 the cocaine dealer. Oso tried to
7 hand appellant the revolver after
8 he fired it, but appellant pushed
9 it away and it fell into the part
10 of the car where the radio was
11 missing. Appellant refused to
12 disclose the identity of Oso
13 saying he would be killed if he
14 did."

15 I submit that that is not accepting
16 responsibility for being the aider and abeter,
17 driving a fellow gang member over to the
18 location, parking with your lights out in what
19 the Appellate Court labeled almost lying in
20 wait, and allowing your crime partner to go up
21 and shoot a rival gang member motive being gang
22 retaliation, and as I had said spraying bullets
23 all around. The defendant's testimony at trial
24 was a rejection of responsibility, a denial of a
25 commission of the file, and is absolutely not
26 what he told the Panel today that he accepted
27 responsibility in the trial. He's basically

1 says, oh, I gave some dude a ride to go buy some
2 coke and then all of a sudden he pulls out a gun.
3 and starts shooting somebody. I had no idea.
4 That is not responsibility. The inmate was
5 attempting to be exonerated of the crime. The
6 Appellate Report Opinion goes into great length,
7 and I won't read it all, but on Page Six it
8 describes all the evidence testified by other
9 witnesses supporting of pre-meditated murder.

10 "The appellant's driving slowly
11 with his lights off, thus
12 eliminating attention to his
13 approaching car is strong evidence
14 of prior planning. The approach
15 without lights is factually
16 similar to lying in wait and
17 illustrates a deliberate plan by
18 the occupants of the car to
19 approach to victim unnoticed so
20 that the killing could be
21 accomplished from a position of
22 surprise and advantage. The
23 relationship between appellant and
24 the victim, each belonging to
25 rival gangs between which there
26 was bad blood provided evidence of
27 the appellant's motive for the

1 shooting. The manner of the
2 shooting, one person shooting and
3 another driving so as to
4 facilitate an easy and rapid
5 escape especially when coupled
6 with appellant's slow approach to
7 the scene with his lights off
8 reflects that the killing resulted
9 from a pre-conceived desire."

10 This is about as callous, cold-blooded and
11 calculated murder as you can have. The only
12 thing was the appellant apparently did not pull
13 the trigger. But he did everything short of
14 that. The psych report in 1994, said well he
15 didn't really want to go into the details of it
16 because it was still on appeal. Current psych
17 report just glosses over the apparent lack of
18 insight and says because of his good behavior he
19 is a low risk. I submit that until he
20 demonstrates more credibility with the Panel and
21 more insight into his actual role and
22 participation, he has not taken responsibility
23 for it and therefore his statements of remorse
24 and the psych report are not actually supportive
25 because they really didn't delve into it. The
26 fact that he hadn't been caught in other crimes,
27 had a minimal criminal record is commendable.

1 It's not really an escalating pattern of
2 violence. He did have summary probation, but
3 the inmate told the psychologist in 1994, which
4 was also kind of troubling, that he had the
5 mentality of a 15 year old. He indicated that
6 this tragic event, being convicted of murder,
7 was a quote "wake up call" --

8 **ATTORNEY RUTLEDGE:** Objection. It
9 doesn't say being convicted of murder.

10 **PRESIDING COMMISSIONER BIGGERS:** What
11 page are you on, sir?

12 **DEPUTY DISTRICT ATTORNEY MORRISON:** I
13 just -- it doesn't. I am commenting on his
14 psych report. He's -- the inmate indicated --

15 **PRESIDING COMMISSIONER BIGGERS:** Just a
16 second, sir. Okay. Let's keep this civil and
17 it's not written -- are you reading directly
18 from the psychologist's report?

19 **DEPUTY DISTRICT ATTORNEY MORRISON:** I
20 read it and then I made a parenthetical comment.

21 **PRESIDING COMMISSIONER BIGGERS:** Okay.
22 Then perhaps you should paraphrase it saying
23 your opinion. Continue.

24 **DEPUTY COMMISSIONER MEJIA:** What is
25 interesting is talking about that the immature
26 behavior at the time -- that's on Page One of
27 the report, and he stated I had the mentality of

1 a 15 year old. The official version read
2 described a juvenile man. The inmate was 25 at
3 the time of his crime. This is not a youthful
4 offender, unsophisticated (indiscernible). This
5 isn't a 15 or 16 year old gang banger. This is
6 a 25 year old out on a mission of revenge.

7 **ATTORNEY RUTLEDGE:** Objection. Mission
8 of revenge? Where's that from? You're supposed
9 to -- excuse me. I just want to note that the
10 DA's supposed to -- your comments are supposed
11 to be supported by documentation.

12 **PRESIDING COMMISSIONER BIGGERS:**
13 (Indiscernible).

14 **DEPUTY COMMISSIONER MEJIA:** The Appellate
15 Decision -- talking about a retaliatory gang
16 opinion -- member for a --

17 **PRESIDING COMMISSIONER BIGGERS:** Let's --
18 let's -- okay. Let's -- whenever --

19 **DEPUTY DISTRICT ATTORNEY MORRISON:** this
20 is within the range of proper comment.

21 **PRESIDING COMMISSIONER BIGGERS:** Then Mr.
22 Morrison, if we're gonna speculate I think we
23 need to make sure that we say and we make
24 (indiscernible) in your opinion or -- I don't
25 think that we should speculate on something of
26 this nature.

27 **DEPUTY DISTRICT ATTORNEY MORRISON:**

1 Commissioner, excuse me, but I'm permitted to
2 make public comment. I'm not asking you to
3 speculate. The Appellate Decision describes --

4 **PRESIDING COMMISSIONER BIGGERS:** I
5 understand --

6 **DEPUTY DISTRICT ATTORNEY MORRISON:** --
7 any motivation --

8 **PRESIDING COMMISSIONER BIGGERS:** I
9 understand that.

10 **ATTORNEY RUTLEDGE:** From another --

11 **DEPUTY DISTRICT ATTORNEY MORRISON:** There
12 was a rival shooting. There was a rival
13 shooting --

14 **PRESIDING COMMISSIONER BIGGERS:** I
15 understand that.

16 **DEPUTY DISTRICT ATTORNEY MORRISON:** Now,
17 if the gang goes out to retaliate --

18 **PRESIDING COMMISSIONER BIGGERS:** Then
19 that's the way you should phrase it -- that
20 based on --

21 **DEPUTY DISTRICT ATTORNEY MORRISON:** That
22 is what gang members refer to as getting
23 revenge.

24 **PRESIDING COMMISSIONER BIGGERS:** I
25 understand that, sir.

26 **DEPUTY DISTRICT ATTORNEY MORRISON:** And
27 my comment is that he was out on a mission of

1 revenge that resulted in the death and a shot up
2 neighborhood. And therefore, a particularly
3 egregious crime under Dannenberg, as the Chair
4 noted the case the inmate submitted, and he is
5 unsuitable for parole and we ask for a three
6 year denial. Thank you.

7 **DEPUTY COMMISSIONER MEJIA:** Let's --
8 before you do your -- let me just put on the
9 record that he does have the completion
10 paperwork, because it was very confusing -- you
11 had to really look at it. He did have Air
12 Conditioning completion in October 1997. It's
13 just confusing. It doesn't say he completed it.
14 It says his assignment (indiscernible) and Mr.
15 Plaza has completed 15 certification units, 100%
16 of the class. Maybe that how we --

17 **INMATE PLAZA:** A hundred percent of what?

18 **DEPUTY COMMISSIONER MEJIA:** Of the class.

19 I don't know what it means, sir, but it does say
20 that he has completed -- units completed. This
21 is the Education Progress Report. Normally they
22 put here completed completion, but it just say
23 completed some of the curriculum -- that's when
24 he was a Clerk. And then when he became a
25 student he completed 15 certification units,
26 100% of the class. So I would say that is
27 completion.

1 **PRESIDING COMMISSIONER BIGGERS:** All
2 right thank you.

3 **DEPUTY COMMISSIONER MEJIA:** And then
4 another one is October 28, 2000 -- October 28th
5 -- April 28th, 1995, he completed his Vocational
6 Dry Cleaning. Another confusing chrono here.
7 We may have to look at it again. A handwritten
8 (indiscernible) Teacher's Aide and .
9 (indiscernible) he was a key person assisting in
10 (indiscernible) Dry Cleaning program, all areas
11 in training and development of other students.
12 He has learned all aspects of this Dry Cleaning
13 business. And it's noted here, reason for the
14 termination, his job change -- Job change
15 completed. So which means I would say.
16 (indiscernible) in 1994, (indiscernible) 1995 he
17 has completed the Dry Cleaning business.

18 **PRESIDING COMMISSIONER BIGGERS:** So
19 basically you're saying the chrono's in support
20 of completion; just don't have the --

21 **DEPUTY COMMISSIONER MEJIA:** Yeah, the
22 actual completions.

23 **PRESIDING COMMISSIONER BIGGERS:** The
24 actual completions. Ms. Rutledge, closing
25 please.

26 **ATTORNEY RUTLEDGE:** Thank you for
27 verifying that for us, Commissioner. While I'd

1 like to go off of the suitability factors, I
2 think that's most appropriate. We're here today
3 because we -- well you know why we're here, the
4 legislature sets an open term for a crime such
5 as this and -- meaning that there is a belief
6 that persons committed for first-degree murder
7 may at some point become suitable members of
8 society, people who have paid their debt to
9 society, bettered themselves, and we can all
10 feel reasonably safe that they're out among us.
11 Had this commitment offense been of the -- had
12 it been truly lying in wait -- which is a
13 special circumstance of first-degree murder
14 punishable by death, we may not be sitting here
15 today. The commitment offense itself, my client
16 has taken responsibility for it. What was said,
17 his testimony to the Court, matches what he has
18 said in earlier reports. And, under Dannenberg,
19 specifically Dannenberg, I think is supportive
20 of when you have to -- and I know you have to
21 weigh the commitment offense but weighing that
22 in, Dannenberg says if it doesn't take more than
23 it was necessary to complete the murder. This
24 victim was shot and died within minutes.
25 There's no evidence of mutilation, there's no --
26 there were no other targeted victims. We found
27 a bullet -- but we don't even know if anybody

1 was home. There's no evidence that there were
2 other people that were actually at harm at the
3 time of the shooting. In moving on to my
4 client's remorse for this offense. He has --
5 he's expressed today his remorse for this crime,
6 but I think more importantly his determination
7 to turn himself around. Had he been such a hard
8 core gang member, he'd never had made it this
9 far. We know that. We know how it is to enter
10 a prison on a Level IV and what it takes to
11 survive. And it takes a lot of determination.
12 It takes somebody who truly does realize that,
13 you know, there's a better way to live. And, I
14 think to his, you know -- the prison Chaplain
15 (indiscernible) he doesn't write letters for
16 very many inmates. This is the first one I've
17 seen. And he wrote something really important
18 because I think -- I think this really says it
19 all about my client as far as remorse would go,
20 I think that that I would speculate and submit
21 that that's -- he could be programming doing
22 everything he's supposed to do and not go to
23 church. There's got to be some -- I would
24 submit or speculate that perhaps he's got some
25 insight and a conscience to where he feels the
26 need to associate with the church. And, there
27 was a paragraph that wasn't read during the

1 letters that I just wanted to say and it was
2 written by Chaplain Lindsay. And it says,

3 "People often ask me what kind of
4 results I see in my work here in
5 the prison. I will hold up one
6 hand showing the number five, and
7 they will say those odds aren't
8 very good since there are more
9 than 7,000 plus inmates in your
10 facility. To which I'll reply,
11 you're right, except I look at it
12 as mining for diamonds and when
13 you find one you have some -- when
14 you find one you have something of
15 value."

16 Well, inmate Plaza is one of those diamonds.
17 You know, I'm not going to sit her and
18 regurgitate all of his accomplishments and the
19 binder he provided to the Board -- we've gone
20 over them. In every area of programming he's
21 met -- he's met self-help, he admits his
22 substance abuse, he's been treating that
23 substance abuse, he's done Impact, he's done
24 Anger Management, he's participating in sports,
25 he has an excellent job record. He's actually
26 got a chrono from his supervisor in Culinary
27 who's recommending him for a job, I mean,

1 anticipating that an employer on the outside
2 where the public has access to the restaurant
3 that he's going to present that in a public
4 place and ask for employment. He has, you know,
5 taken other health courses and has not had a 115
6 or anything in 15 years, which is extremely
7 commendable. And again, that more expresses, I
8 think, his insight in to literally reversing his
9 life. He said he was leading an irresponsible
10 life at that time; however he did work and
11 support his wife and children. Did you have one
12 child at that time or --

13 **INMATE PLAZA:** Two.

14 **ATTORNEY RUTLEDGE:** He had two that he
15 supported. So he did -- it was like he said, he
16 was kind of a -- he was a dysfunctional person
17 over all, but able to maintain a job and take
18 care of his family which indicates that there
19 are pro social qualities in this man. He's not
20 just some thug out there, you know, blowing
21 people away. He has a very stable social
22 history as far as being with his family, being
23 married. He's still married to the same woman;
24 still has three children. Appreciates the
25 impetus he put on her when he entered the
26 institution and forced her into being a single
27 parent. He's got letters from his children that

1 he's attempting to father from prison, cousins,
2 other assortment of persons, and also he has at
3 least two job offers. One from Mr. Rentaria
4 (phonetic) and then one from his previous
5 employer -- was it --

6 INMATE PLAZA: Yes.

7 ATTORNEY RUTLEDGE: -- where he worked.

8 He had a good job record there before he entered
9 the institution. And aside from all the great
10 things he's done which I think all point to
11 suitability and the fact that he has expressed
12 his remorse and does, by his actions not just
13 his comments, have insight into how much trouble
14 he created with this offense and saw what he
15 needed to do to turn it around. But I think we
16 do -- I think oftentimes in these types of cases
17 there's the white elephant in the room, which is
18 time. This is his first hearing and it's almost
19 a given that nobody gets paroled their first
20 hearing. I think the jargon is always he needs
21 to maintain his gains or you point to the
22 commitment offense, but I think that the
23 suitability --

24 DEPUTY COMMISSIONER MEJIA: -- hold it.

25 [Thereupon the tape was changed to Tape Two.]

26 DEPUTY COMMISSIONER MEJIA: Okay, go

27 ahead, continue. Second side, second set of

1 tapes for Mr. Plaza.

2 **ATTORNEY RUTLEDGE:** I do believe that
3 this man meets every single suitability factor.
4 He has completed his programming -- I mean, he
5 remains active in his programming and he's done
6 all those things necessary to show us that he's
7 serious about release and I think the only
8 question that would linger would be time,
9 because often we don't see people paroled by
10 their first hearing but I would say this man is
11 one of the few cases that we see where he's
12 suitable at his first hearing. He's suitable.
13 He's prepared to enter the outside. He's got a
14 plan and the information he submitted to the
15 Board wherein he's going to -- exactly what he's
16 going to do when he walks out the doors. I
17 would just ask this Board -- I know it's a
18 difficult job for you and I know you've gotta
19 consider the person paying their debt to society
20 because that's part of our justice system, but I
21 would ask you to -- to give this man a different
22 look as somebody who is suitable, who has served
23 enough years according to what the Legislature
24 said and please grant him a parole date, or if
25 you find him suitable set a term for him today.
26 Thank you.

27 **PRESIDING COMMISSIONER BIGGERS:** Thank

1 you, very much, Ms. Rutledge. Now Mr. Plaza you
2 have the opportunity to tell this Panel why you
3 feel that you are suitable for parole.

4 **INMATE PLAZA:** Sorry. A little nervous.
5 I believe first of all if I could I'd like to --
6 I'd like to explain a couple of things. One
7 thing that I have heard a lot of times being
8 incarcerated that I didn't know 16 years ago --
9 I had no knowledge of what personal disorders
10 were because I was so caught up in my drug and
11 alcohol habit. I didn't look at -- I didn't
12 look at things as I should have, not normally
13 anyways. I realize that being anti social at
14 the time, you know, had me do things that any
15 normal person would not do. It wasn't due --
16 I'm not making excuses. I never say that, you
17 know, some people do -- but I don't say that the
18 drugs or the alcohol committed the crime. I
19 understand that I was the one that made the
20 choice, and I take full responsibility for that.
21 But I do -- I also want to say that being anti
22 social, you know, my problems started at about
23 15 years old, basically. Fifteen years old, I
24 hit high school started hanging out with the
25 wrong crowd. Running with the guys, you know,
26 that I shouldn't have -- had no business hanging
27 around. But because they all were in the same

1 predicament, whether they were raised by a
2 single parent or, you know, were also seeking
3 some kind of, you know, some kind of family.
4 Some kind of acceptance. And, being that I was
5 in that same category looking for acceptance,
6 like I said earlier, I chose to hang around with
7 people that had a lot of similarities to me.
8 And because I chose to hang around with those
9 people I was around things that, you know, I
10 shouldn't have been around and drugs and alcohol
11 became my biggest problem. And I understand
12 that, you know, again a personal disorder border
13 line, I crossed a lot of border lines but laws.
14 specifically because by purchasing drugs and
15 alcohol I was naturally breaking laws, you know,
16 to purchase these products. Again, you know,
17 narcissistic because I hung around with this
18 group I kind of got the feeling that I was, you
19 know, I should have respect or I should have
20 things coming just because of who I was or who I
21 hung around with. But upon coming to prison I
22 can honestly say that the very first thing that
23 helped me out was being incarcerated, of course,
24 but going to AA. When I first went to AA I
25 started realizing when I got to Step Four
26 especially because you have to take that moral
27 inventory, I started realizing and seeing

1 things. And the sponsor at that time he taught
2 us to look at things and to -- and to just, you
3 know, call them what they are. If you're lying,
4 then you're a liar. If you're stealing, then
5 you're a thief. If you're doing -- whatever the
6 circumstances might be. And so I did that, and
7 I started looking at things and, you know, to be
8 honest initially it was ugly and I -- some
9 things you know you kinda don't want to accept
10 because you want to think that, you know, you're
11 not like that or you're better than that. I
12 never wanted to accept to that, you know, that I
13 had these problems, you know, because I thought,
14 you know, hey I'm normal. There's nothing
15 different about me than the next guy. But upon
16 learning these things I started working on
17 making that change, changing my life. AA led me
18 to church. When I started going to church again
19 that was a big help because the church started
20 helping me again look at myself, and get an
21 understanding. And, once I started to get that
22 understanding I really began to make more
23 change. And, as time went on -- I mean, I
24 always got something out of the self-help
25 groups. Every group had at least something to
26 offer but as I went along I started learning, I
27 started getting the insight of my crime of

1 myself and I started realizing as well the
2 severity of my crime, you know, that it wasn't
3 just, you know, something that happened, you
4 know. It was way deeper than that. So, I
5 started looking into these things. Upon looking
6 into these things and really getting that
7 understanding, Impact -- like I said earlier,
8 the Impact was a great help to me. I started
9 learning different things from Impact as well.
10 Started getting a different perspective and
11 getting more of a panoramic vision on life, you
12 know, on everything that I'm involved in. What
13 I do. It was a Captain who -- Captain Gega
14 (phonetic), Unit Three Captain, she was the one
15 who kind of, you know, gave me that opportunity
16 as well to get into doing more than just the
17 average guy that was in there. So, I started,
18 you know, working with her. Working with her
19 you see the problems in the paperwork. I was
20 able when that riot broke out in the wing
21 between the Nationals and the Bull Dogs, which
22 is two different groups that are here -- even
23 though I'm not a part of any of the groups I
24 have a rapport because now people see me and
25 they know that I'm the opposite of them. I'm
26 constantly talking to people, trying to
27 encourage them to be their own man, to make

1 their decisions, to not follow that peer
2 pressure and the crowd and do those things. And
3 so they -- they tell me, you know, they see
4 integrity in me, and it's something that you
5 don't see in just everybody or anybody. So
6 having that has helped me a lot. I believe that
7 through them programs -- you also -- there was
8 another letter in the packet. It was from
9 Victory Out Reach out of here in San Jose. They
10 have a program also. Not just here in San Jose.
11 They have it in every County. It doesn't
12 matter. I talked to Ed Morales who's the
13 Director there. He says it doesn't matter what
14 County you go to, they have a program that's
15 called Cease Fire and because of the education
16 and the insight that I've gotten through the
17 program he's told me, wherever you go, I want to
18 use you because you can get to these people.
19 You can reach out and talk to these people so
20 that there's never -- again there doesn't' have
21 to be another Mr. Littlebull. There doesn't
22 have to be somebody in my position, you know.
23 So that's what I look to do now, is to stop them
24 kind of things. Deter people, you know, doing
25 them kind of things. I know it's in the
26 Appellate version as well, even though no one
27 read it here today, but you know that upon my

1 reaching the County Jail, you know, I was
2 approached. Because, see, I was not -- I was
3 not an active member but I hung around with the
4 crowd. So I was approached in the County Jail
5 and, you know, was threatened. That was the
6 County Jail. Upon reaching prison -- and it
7 actually turned out to be one of the biggest
8 favors they could do for me. I was approached
9 in prison, and they told me, you're on your own.
10 You don't run with us. We don't claim you. You
11 don't claim us. Which was like I said, the
12 biggest favor they could have done for me at
13 that time. Because that was -- that was what
14 got me started as well to make that change and
15 not continue to try to pursue that road that I
16 was on prior to that point. So, being that I
17 was excommunicated -- it was good for me,
18 because then, even though they told me you're on
19 your own, and I know that in here not just
20 anybody can be out on their own. You usually
21 have to find a crowd or find a race or, you
22 know, someone. You usually gotta, you know,
23 hang out with somebody. But I was able to do
24 it. I was able to go on my own. And I started
25 to take the attitude too that, you know what,
26 I'm not gonna pay attention what other people
27 say. I don't care what, you know, what they say

1 or do because I want to be that person that I
2 know I can be. And even my own mother told me
3 that one time on visit six, seven years ago.
4 She said, you know, you've turned into that man
5 that I always wanted you to grow up to be, you
6 know. I understand that today I have an
7 opportunity to get out, come before you, and to
8 put all these things in practice. As my
9 attorney said, not just talk the talk but walk
10 the walk. And, I have things in place. I have
11 things, you know, set up where I can go and be a
12 part of society and I can go and make a
13 difference and hopefully like I said before get
14 at, you know, not just youngsters, anybody.
15 Whether they're young or old, and be able to
16 share with them and explain to them, you know,
17 educate them. You know, I'm all for
18 intervention. Intervention is good. But,
19 prevention is even better. You know,
20 intervention the problem's already there. But
21 prevention, the problems' not there yet or
22 hasn't got to that point where, you know, it's
23 too the extreme. So, I hope that today, you
24 know, the Panel would surely take a look and
25 consider me because I believe with the things
26 that I have, with all the support system that I
27 have, with the plans and the goals that I have

1 -- and it's not something that I did all my
2 life, but I do have plans and goals. And I
3 believe those plans and goals that I have now
4 are going to be the things that help me to
5 succeed, and I have no problem with any kind of
6 parole to the extreme conditions. Testing, you
7 know. Whatever I need to do. I have no problem
8 whatsoever. And so I -- I just ask if, you
9 know, you Panel members today would consider me
10 as being suitable and I thank you and I do want
11 also would like to say that this packet here was
12 not a personal attack on you. It was not meant
13 to be, you know, in any way personal. I do have
14 to say it's my first one and being unfamiliar I
15 did allow other people to kind of give me a
16 little helping hand, and if there was anything
17 that, you know, was not necessary or was an
18 overkill it was not done intentionally and once
19 my final statement because I want to make sure
20 that you know is that, again, I take full
21 responsibility for the taking of the life of Mr.
22 Littlebull and I thank you.

23 **PRESIDING COMMISSIONER BIGGERS:** We will
24 recess at this point.

25 R E C E S S

26 --oo--

1 CALIFORNIA BOARD OF PAROLE HEARINGS

2 D E C I S I O N

3 DEPUTY COMMISSIONER MEJIA: We're back on
4 record for our decision -- on tape.

5 PRESIDING COMMISSIONER BIGGERS: Let the
6 record reflect that everyone that was in the
7 room prior to us recessing for deliberations are
8 now back in the room. The Panel has reviewed
9 all information received from the public and
10 relied on the following circumstances in
11 concluding the prisoner is not suitable for
12 parole and would pose an unreasonable risk of
13 danger to society or a threat to public safety
14 if released from prison. The offense was
15 carried out in an especially cruel and callous
16 manner in that this was a drive-by shooting
17 where a Mr. Patrick Littlebull, the victim, was
18 shot and killed as a retaliatory type crime
19 based on what was in the Appellate Decision.
20 This offense was carried out in a calculated
21 manner, and I'll read from the -- that the --
22 decision that Mr. Plaza was

23 "-- driving slowly with his lights
24 out thus eliminating attention to
25 his approaching car was strong
26 evidence of prior planning. The

1 approach without lights is
2 factually similar to lying in
3 waiting and illustrates a
4 deliberate plan by the occupants
5 of the car to approach to victim
6 unnoticed so that the killing
7 could be accomplished from a
8 position of surprise and
9 advantage."

10 The motive for the crime was very trivial in
11 that it was a gang related shooting, and these
12 conclusions was drawn from the Statement of
13 Facts from the Appellate Decision. You have no
14 -- your criminal record was of no significance
15 to us because you had very little if any. You
16 have programmed extremely well. You should be
17 commended for no disciplinary actions. Your
18 psychiatric evaluation was favorable. Your
19 parole plans were favorable. Your 3042 response
20 from the District Attorney was opposed to your
21 -- a finding of parole suitability, and you have
22 numerous letters of support. The Panel
23 struggled with this for quite some time,
24 basically because of a couple things that I will
25 go over with you right now. First of all, the
26 signs of remorse for the victim. You say you

1 take full responsibility for the crime, but when
2 Deputy Commissioner Mejia started talking to you
3 about the crime and what you took from the
4 victim, you went off and you started talking
5 about collateral effects of the families and all
6 the others but you never mentioned about the
7 victim. You need to -- and with that, that
8 gives us an indication that you really haven't
9 taken -- you're minimizing your involvement in
10 the crime by not knowing exactly what happened
11 to the victim. You need to get that out. We
12 -- as I said, we talked about it for quite some
13 time because we just feel that you're not --
14 it's -- you're just taking responsibility for
15 the crime is superficial, and we need to get
16 genuine remorse. So, the big thing is remorse
17 for the victim. We also feel that your gains
18 are recent, as illustrated by when we talked to
19 your earlier and the District Attorney even
20 brought this up and I went back and went over
21 the Appellate Decision as well as the sentencing
22 thing for -- you indicated initially that you
23 were not involved with the shooting. Then you
24 say you were when they told you about your
25 vehicle, and that's when you mentioned about the
26 gun. They found the gun within (indiscernible).

1 We note that you are doing extremely well
2 programming, but we just feel that you need to
3 have more time. You should be commended for
4 your program that you have been involved with,
5 your Vocational Dry Cleaning, your Air
6 Conditioner Refrigerator, AA and NA, and the
7 Impact and Anger Management courses that you are
8 working with right now. In a separate decision,
9 the hearing Panel thought it's not reasonable to
10 expect that parole will be granted in a hearing
11 in the following two years. Again, the crime
12 itself was just especially cruel and callous in
13 that you (indiscernible) on an individual who
14 was vulnerable. He didn't have a weapon; he's
15 walking down the street, and you and your
16 co-defendant shot him. And, we realize that you
17 only drive the vehicle, but the mere fact that
18 you were there with your lights off is a strong
19 indication that you knew what was going to take
20 place. The -- and the motive for the crime as
21 we talked about earlier, was very trivial in
22 that this was a gang retaliation. All
23 indications point to this was a gang
24 retaliation. Once you've become -- once you've
25 come to grips with what transpired, allow
26 yourself to not minimize the involvement of what

1 think you'll be okay, because you're definitely
2 on the road to getting a date. But you've got
3 to take that remorse to the victim, you can't
4 generalize. You said I take full
5 responsibility. You got to take it from not the
6 family. You've got to take responsibility for
7 Patrick.

8 **INMATE PLAZA:** I understand.

9 **PRESIDING COMMISSIONER BIGGERS:** Mr.
10 Mejia?

11 **DEPUTY COMMISSIONER MEJIA:** No further
12 comments from me.

13 **PRESIDING COMMISSIONER BIGGERS:** Okay.
14 Good luck to you. That concludes the hearing.
15 The time is now ten minutes to --

16

17

18

19

20

21

22

23 **PAROLE DENIED TWO YEARS**

AUG 29 2006

24 **THIS DECISION WILL BE FINAL ON: _____**
25 **YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT**
26 **DATE, THE DECISION IS MODIFIED.**

CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, RUBY M. DOUGHERTY, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total TWO in number and cover a total of pages numbered 1 - 93, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the INITIAL PAROLE CONSIDERATION HEARING for JESUS PLAZA, CDC NO. H-12371, on MAY 1, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated MAY 30, 2006, at Sacramento, California.


RUBY M. DOUGHERTY
TRANSCRIBER
PETERS SHORTHAND REPORTING

EXHIBIT B

LIFE PRISONER EVALUATION REPORT
INITIAL PAROLE CONSIDERATION HEARING
DECEMBER 2005 CALENDAR
ADDENDUM

PLAZA, JESUS

H12371

This addendum is being submitted as a correction to some inaccuracies that were found in the Board Report for Plaza's Initial Parole Consideration Hearing.

On Page 2 of the report under Aggravating Circumstances: it says use of weapon: Gun, 9mm. That information was taken from the POR pg. 2. In the Court Transcripts for the Court of Appeal of the State of California Second Appellate District Division Two Page 3, it states that a .38 revolver was found in a hollow space underneath the dashboard of the suspects. A ballistic test indicated that an expended bullet found at the scene on Loveland Street was fired from the gun that was recovered.

Under the Preconviction Factors: C. Personal Factors: The Board Report states that Plaza was born 2/7/65 to Caroline and Jessie Plaza. This should be corrected as follows: Plaza was born 3/7/65 to Caroline and Jesus Plaza. Plaza also said that his marriage took place on 5/12/84 and not 5/7/84.

Postconviction Factors: Should read as follows; Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/21/92, Plaza was transferred to Calipatria where his custody was reduced to Close B. While at Calipatria, he worked in the culinary, pre-voc. and Computer Programming. Plaza was again transferred to CSP-LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the drycleaning, voc electrical shop, and air cond. refrigerator and heating. On 12/16/97 he was transferred to Avenal where he was in Computer Programming. On 3/13/98 he was transferred to CTF Soledad North Facility where he was assigned to the yard crew 4/7/98 to 4/28/98, and then to PIA Textiles. On 12/31/98 Plaza went to CMC East as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification, Close B custody was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF Central Facility, Plaza has been assigned to wing porter, culinary, dental assistant and again culinary, where he remains assigned.

Inmate Copy

Sent to Inmate on 11/29/05

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
2006 CALENDAR

T. Verdesoto 11-16-05
T. Verdesoto Date
Correctional Counselor I

D. Carnazzo CCT 11-16-05
D. Carnazzo Date
Correctional Counselor II

I. Guerra FC(A) 11-16-05
I. Guerra Date
Facility Captain

D. S. Levorse CPCR 11-18-05
D. S. Levorse Date
Classification and Parole Representative

**LIFE PRISONER EVALUATION REPORT
INITIAL PAROLE CONSIDERATION HEARING
DECEMBER 2005 CALENDAR**

PLAZA, JESUS

H12371

I. COMMITMENT FACTORS:

- A. **Life Crime:** Murder 1st, (PC 187), Los Angeles County Case #VA004108. Sentenced: 25 years to Life. Weapon: Gun. MEPD: 1/25/07. Received in CDC: October 9, 1991. Victim: Patrick Littlebull, age: unknown.
1. **Summary of Crime:** The defendant, Jesus Plaza, and another subject were seen driving a vehicle near the victim, Patrick Littlebull. A witness heard a series of shots and saw the victim Patrick collapse onto the floor. Officers arrived at the scene of a residential street in Bell Gardens and found Patrick lying on the floor in a puddle of blood. Paramedics arrived shortly after and pronounced him dead at the scene. Victim's autopsy indicated that his death resulted from a single gunshot wound to the right lateral side of his chest.
- Several witnesses gave officers information about the suspects vehicle, and approximately 1 hour later, police saw the vehicle and detained the defendant along with a second suspect. Officers observed a .9mm casing on the floor board of the vehicle in front of the passenger. Both Plaza and his companion were arrested and later evaluated for evidence of gunshot residue. (Source: POR pg 2, 3 &4).
2. **Prisoner's Version:** First and foremost to each family member and friend of Mr. Littlebull. Knowing that there are no special, no specific, nor any amount of words that could right the wrong I did. Nor can any words equal or be greater than the crime in a good way, I wholeheartedly apologize yet due to multiple counseling programs and self help programs that I have seeked out throughout my incarceration. I've gained knowledge and an understanding of my crime and true remorse, and so I take full responsibility for my choices and actions in the commitment of this crime and also stipulate to the P.O.R. as being true and accurate.

3. **Aggravating/Mitigating Circumstances:**

a. **Aggravating Factors:**

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CTF-SOLEDAD

DEC/2005

SENT TO IM ON 9/22/05

INMATE COPY

LIFE PRISONER EVALUATION REPORT
 PAROLE CONSIDERATION HEARING
 DECEMBER 2005 CALENDAR

- ❖ Victim was particularly vulnerable.
- ❖ Prisoner had opportunity to cease but continued with crime.
- ❖ Murder was senseless and served no purpose in completing the crime.
- ❖ Use of weapon: Gun, .9mm.
- ❖ Nature of crime exhibited viciousness, cruelty or callousness.

b. Mitigating Factors:

- ❖ Prisoner has minimal or no history of criminal behavior.

B. Multiple Crime(s): N/A.

1. Summary of Crime: NA.

2. Prisoner's Version: NA

II. PRECONVICTION FACTORS:

A. Juvenile Record: None noted in Central File.

B. Adult Convictions and Arrests:

- ❖ 07/16/83 PC 594 (a) Vandalism.
- ❖ 09/17/83 PC 187 Attempted Murder (no disposition).
- ❖ 04/02/84 PC 594 Malicious Mischief/Vandalism.

C. Personal Factors: Plaza was born 2/7/65 to Caroline and Jessie Plaza. He has four sisters and a brother. Plaza graduated from high school 5/17/83 from Vail High in Montebello, CA, and then married Guadalupe Falcon on 5/7/84 and they have three children, Ramona, and Justinia, and Izaiah.

III. POSTCONVICTION FACTORS:

A. Special Programming/Accommodations: N/A.

B. Custody History: Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/21/92 Plaza was transferred to Calipatria where his custody was reduced to Close B. While at Calipatria, he worked in the culinary and pre-voc. Plaza was again transferred to CSP LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the dry cleaning and voc electrical shop. On 12/16/97 he was transferred to Avenal, and on 3/13/98 he was transferred to

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
DECEMBER 2005 CALENDAR

CTF Soledad. While at CTF, Plaza was assigned to PIA Textiles. On 12/31/98 Plaza went to CMC-E as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification, Close B custody was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF, Plaza has been assigned as a porter, a dental assistant and has worked in the culinary.

- C. **Therapy and Self-Help Activities:** Since Plaza's incarceration, he has participated in Alcoholics Anonymous, Inmate Education Advisory Committee, Bible Study, the Impact Program, Narcotics Anonymous, served as a Deacon, and was a member of the Protestant Choir. Refer to Post Conviction Progress Reports for more details.
- D. **Disciplinary History:** Plaza has remained disciplinary free throughout his incarceration.
- E. **Other:** N/A.

IV. FUTURE PLANS:

- A. **Residence:** Plaza plans on living with his brother, Hector Plaza. Hector's address is 353 Carla Dr. Simi Valley, California 93063. His phone number is (805) 581-6323
- B. **Employment:** Plaza plans on working at Telair International 4175 Gardain Street, Simi Valley, CA 93063, phone #(805) 578-7303.
- C. **Assessment:** In review of Plaza's parole plans, this counselor does not foresee any problems, however, it is recommended that Plaza updates his support letters prior to his hearing.

V. USINS STATUS: NA.**VI. SUMMARY:**

- A. Prior to release the prisoner could benefit from:
 - 1. Continuing to be disciplinary free.
 - 2. Participation in self-help and therapy programs.
 - 3. Upgrading vocationally and educationally.

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
DECEMBER 2005 CALENDAR

- B. This report is based upon an interview with the prisoner on 9/1/05 lasting approximately 1 hour(s) and a complete review of the Central File lasting 3 hours(s).
- C. Per the Olson Decision, Plaza was afforded an opportunity to examine his Central File on 9/1/05, Plaza did examined his Central File. (Refer to CDC 128-B dated 9/1/05 in the General Chrono Section of the Central File.)
- D. No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan (ARP) for effective communication.

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
DECEMBER 2005 CALENDAR

5

T. Verdesoto 9-20-05

T. Verdesoto Date
Correctional Counselor I

J. Soares 9/21/05

J. Soares Date
Correctional Counselor II

A. Guerra 9/21/05

A. Guerra Date
Facility Captain

D. S. Levorse CDR 9-22-05

D. S. Levorse Date
Classification and Parole Representative

EXHIBIT C

**MENTAL HEALTH EVALUATION FOR
THE BOARD OF PRISON HEARINGS
May, 2006 Lifer Calendar**

**CORRECTIONAL TRAINING FACILITY SOLEDAD
APRIL, 2006**

NAME: PLAZA, JESUS
CDC#: H-12371
DOB: 3/7/65
OFFENSE: PC 187 MURDER, FIRST DEGREE
DATE OF OFFENSE: 5/26/90
SENTENCE: 25 YEARS TO LIFE
EVALUATION DATE: 4/16/06
MEPD: 1/25/07

I. IDENTIFYING INFORMATION:

Mr. Jesus Plaza is a 41 year old, first term, Hispanic, married male from Los Angeles County. He is an active Christian. He has served 16 years on his sentence.

SOURCES OF INFORMATION:

This report is based upon a single 90 minute interview, plus review of the central and medical files.

II. DEVELOPMENTAL HISTORY:

When questioned about prenatal and perinatal issues, he stated that he was born at General Hospital, and his birth was normal. He progressed through developmental milestones in a normal manner. He is the second of four children. There is no history of cruelty to animals, enuresis or arson. He was never abused as a child, either sexually, physically or emotionally. He did have accidents as a child. One time he fell off of a pipe, injuring his leg on a fish tank. At the age of eleven he was involved in a car accident and injured his left knee which had recently been fixed through surgery.

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III. EDUCATION:

He attended public school and graduated from Vail High School in Montebello. He was never suspended or expelled. He has continued his education by attending college classes. He is attending Coastline Junior College at this time by correspondence, working towards his AA degree. He has 15 more credits until he gets his AA degree.

IV. FAMILY HISTORY:

Mr. Plaza's biological parents separated when he was about four years of age. He was raised primarily by his mother and maternal grandparents. His mother is currently employed by St. Francis Hospital, and his father worked for years as a mechanic and an auto body repairman. He is now 66 years of age and has retired. He has one older sister that works for General Electric in Pennsylvania, a younger sister who is mainly retarded who lives with his mother, and one younger brother who is married and working as a sales manager of a container corporation. There is no family history of mental illness, of drug abuse, of alcoholism, or of legal problems.

V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:

Mr. Plaza is heterosexual. There is no history of high risk behavior or of problems.

VI. MARITAL HISTORY:

He has been married one time. He was married on 5/12/84 to Guadalupe who lives in Whittier. There are three children. Ramona, 21 years of age, is working as a R.N. at St. Francis Hospital. Justina is 19 and is attending Cerritos College. Isaiah is 10 years of age. His marriage is intact, and his wife is supportive. He indicated that he has a very close relationship with his wife and children. They keep in close contact by correspondence, phone calls and several visits a year.

VII. MILITARY HISTORY:

There is no military history.

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VIII. EMPLOYMENT/INCOME HISTORY:

Right after he graduated from high school at the age of 18, he went to work for Century Plastics, where he worked for 4 ½ years. This company made fiberglass products for airplanes. He was the lead man there. In 1987, he went next door to work for Century Arrow doing the same kind of work. These two companies are owned by the same people. One year before the commitment offense, he began working for an asbestos abatement company as a laborer.

In the institution, he has obtained several trades. He has completed Vocational Dry Cleaning, Vocational Air Conditioning, Refrigeration and Heating, Vocational Meat Cutter, and he also has completed a correspondence course as a home inspector. Currently he is working as a meat cutter in culinary.

IX. SUBSTANCE ABUSE HISTORY:

Mr. Plaza stated that he did have an alcohol and drug problem from the ages of 15 to 25. He would drink alcohol primarily on weekends, because he had to work during the week. He smoked some marijuana. He also snorted cocaine about three times a week at the age of 16. At the age of 20, he began using cocaine every other day. He attends Alcoholics Anonymous and Narcotics Anonymous. He attends as often as he can, and he has been going steadily to these programs for the last 13 or 14 years.

X. PSYCHIATRIC AND MEDICAL HISTORY:

There is no psychiatric history. There is no history of serious hospitalizations, other than his surgery on his left knee. There is no history of serious accidents or of head injuries or seizures. His health is good.

XI. PLANS IF GRANTED RELEASE:

Mr. Plaza plans to return to his old employer in Simi Valley. He also will be able to live with his brother in that area. He will be compliant with all parole rules and regulations. He does have strong family support in the community. The prognosis for successful community living in this case is excellent.

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CLINICAL ASSESSMENT

XII. CURRENT MENTAL STATUS/TREATMENT NEEDS

Mr. Plaza related in a serious, sober, and cooperative manner. Mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. He does speak excellent English as well as Spanish. Affect was appropriate. There was no evidence of anxiety or depression. Eye contact was good. His memory was intact. His judgment was intact. His insight and self-awareness were good.

Mr. Plaza has spent a great deal of time in prison trying to improve himself. He currently is attending Coastline College, working on his Associate of Arts degree. His grades are very good. Also, he has obtained a certificate as a home inspector from a professional career development institute in Georgia by correspondence. In addition, he has completed several courses towards self-improvement. He has completed a Prison Fellowship Course in Parenting, Anger Management, another 12 week anger management class, Fathers Behind Bars Activity Group, Family Effectiveness Training and Harmony in the Home, Anger Management Course, Christian Basics Class, Teddy Bear Drive Benefiting Children in Crisis, a job success course, Communicable Diseases, Impact Program focusing on the victim's rights, Christian Living Course, Laubach Literacy Tutor Program, and the Salvation Army Bible Correspondence Course.

CURRENT DIAGNOSTIC IMPRESSION

Axis I: Drug and alcohol use by history
Axis II: No personality disorder
Axis III: No physical disorder
Axis IV: Life term incarceration
Axis V: Current GAF: 95

XIII. REVIEW OF LIFE CRIME

Mr. Plaza discussed the details of the commitment offense. He accepts full responsibility for this offense. He feels very badly that the victim died. He is fully aware that the victim's family has suffered greatly at the loss of their father and husband. The fact that gunshots were fired was a total surprise to Mr. Plaza. He had no idea that this was going to happen, and there certainly was no intent on his part. He is very aware of the repercussions of this offense. Even today his wife, children and mother are being watched and approached about this situation

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by gang members. He is very concerned about their welfare. All of these situations are a result of the commitment offense. Needless to say Mr. Plaza feels deep feelings of sorrow, remorse and grief over this situation.

At the time of the commitment offense, Mr. Plaza had been using cocaine and alcohol. His judgment at that time was impaired by his use of these substances. At the time of the commitment offense he was actually under the influence. However, after 16 years there is no evidence of any involvement in drugs or in alcohol. He has continuously attended Alcoholics Anonymous and Narcotics Anonymous over the years. Since he has become Christian, he has strong values against the use of drugs or alcohol at this time in his life. He is certainly familiar with the destructive effects of this involvement. As a result, he has determined to never become involved in drugs or alcohol again in his life. This information is of historical importance only because it is not currently a diagnostic problem.

XIV. ASSESSMENT OF DANGEROUSNESS

A. In considering potential for dangerous behavior in the institution, Mr. Plaza has remained entirely disciplinary free. This is commendable. This is very difficult to do. At this time at this prison, we are having frequent racial riots. It is very difficult for a Hispanic male to disassociate himself from this activity, which can spontaneously occur in front of him, and if he doesn't get involved, he will receive retaliation. In this case, remaining disciplinary free is a very difficult and commendable achievement. There is no evidence that he has ever been involved in riots, possession of weapons, assaults on others, or threats of any kind. As a result, it is evident that his potential for dangerous behavior in comparison to other inmates is definitely below average.

Mr. Plaza has a chrono from Captain Guerra, in which it was stated that he had been hand picked to work as a communicator, working as a mediator between the two groups in the institution that had been involved in a riot against each other. Due to his ability to mediate between the groups and to get them to agree to non violence towards each other, the riot that occurred at that time was resolved peacefully, and the result was that the institution was able to unlock everybody and proceed with the program.

B. In considering potential for dangerous behavior in the community, Mr. Plaza has no prior arrests for violence before the commitment offense. He did receive an arrest as an adult in 1983 for spraying a one inch diameter dot on the wall. He has remained disciplinary free in the institution. In order to determine his risk level on parole, the Level of Service Inventory-

PLAZA, JESUS
H-12371
4/15/06
PAGE 6

Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, current adjustment, and other factors to determine current risk level. On this measure he obtained a score of 3.6 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 96 of them. This is a very low risk level. As a result, he poses no more threat to society than the average citizen in the community, and probably less threat to society at this point in his life.

- C. At the time of the offense, drugs and alcohol were a problem; however, at this point in his life this is no longer an issue. Therefore, there are no significant risk factors in this case.

XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS

There are no mental or emotional problems in this case that would interfere with routine parole planning. Mr. Plaza has obtained vocational training in several areas. He is currently working as a meat cutter in culinary. He has skills in vocational dry cleaning, as well as in vocational air conditioning, refrigeration and heating. He also has a job offer waiting for him upon his release. He has very strong family support in the community. All of these factors are good indicators of positive parole success. He has maintained his marriage, and his wife continues to be supportive and involved in his life. He maintains constant contact with his three children. Due to his study of the Bible and his commitment to the Christian way of life, he no longer has the irresponsible values and lifestyle that he did prior to the commitment offense. All of these factors indicate that his prognosis for successful adjustment in the community is excellent.

M. Macomber, Ph.D.

M. Macomber, Ph.D.
Correctional Psychologist
Correctional Training Facility, Soledad

B. ZIKA, Ph.D.
B. ZIKA, Ph.D.
Senior Psychologist
Correctional Training Facility, Soledad

D: 4/15/06
T: 4/19/06

EXHIBIT B

FILED
LOS ANGELES SUPERIOR COURT

SEP 18 2007

JOHN A. CHAFFEE, CLERK
BY *Joseph A. Paredes* DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re

JESSE PLAZA,

Petitioner,

On Habeas Corpus

Case No.: BH004502

ORDER RE: PETITION FOR WRIT OF
HABEAS CORPUS

The Court has read and considered the Petition for Writ of Habeas Corpus filed on February 23, 2007 by the Petitioner. Having independently reviewed the record, giving deference to the broad discretion of the Board of Parole Hearings (“Board”) in parole matters, the Court concludes that the record contains “some evidence” to support the determination that the Petitioner presents an unreasonable risk of danger to society and is, therefore, not suitable for release on parole. See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 667.

The Petitioner was received in the Department of Corrections on October 9, 1991 after a conviction for murder in the first degree with a firearm. He was sentenced to 25 years to life. His minimum parole eligibility date was January 25, 2007. The record reflects that on May 26, 1990, the Petitioner was driving with fellow gang members on a street known to be the territory of a rival gang. The Petitioner drove slowly, with the headlights turned off, as he approached a

1 the victim, a rival gang member, who was standing in front of a house. As the Petitioner drove
2 by, his accomplice fired several shots at the victim. The victim was shot and killed. The
3 Petitioner then sped away. A witness saw who heard the gunshots and saw the Petitioner's car
4 speed away called the police and the Petitioner and his accomplices were pulled over and
5 arrested.

6 The Board found the Petitioner unsuitable for parole after his first parole consideration
7 hearing held on August 29, 2006. The Petitioner was denied parole for two years. The Board
8 concluded that the Petitioner was unsuitable for parole and would pose an unreasonable risk of
9 danger to society and a threat to public safety. The Board based its decision primarily upon his
10 commitment offense.

11 The Court finds that there is some evidence to support the Board's finding that the
12 Petitioner's offense was carried out in a calculated and dispassionate manner. Cal. Code Regs.,
13 tit. 15, §2402, subd. (c)(1)(B). The Petitioner drove slowly with his headlights turned off, so as
14 to avoid detection as he approached the victim. This demonstrates that the shooting was planned
15 and that the Petitioner was deliberately driving toward the victim for that purpose. Additionally,
16 the Petitioner's accomplice was armed with a gun for the purpose of shooting the victim.
17 Regardless of whether the Petitioner himself shot the victim, he was acting in concert with his
18 accomplice and, therefore, the shooting is imputed to him.

19 The Court also finds that there is some evidence to support the Board's finding that the
20 Petitioner's motive was very trivial in relation to the offense. Cal. Code Regs., tit. 15, §2402,
21 subd. (c)(1)(B). The Petitioner and his accomplice shot the victim merely because he was a rival
22 gang member. There is no evidence that the victim had threatened or harmed the Petitioner in
23 any way. Gang rivalry is a very trivial motive for killing a man.

24 Additionally, the Court finds that the Board did not err in denying the Petitioner parole
25 for a period of two years. The Board must articulate reasons that justify a postponement, but
26 those reasons need not be completely different from those justifying the denial of parole. See *In*
27 *re Jackson* (1985) 39 Cal.3d 464, 479. The Board indicated that the Petitioner was denied parole
28 for two years because his commitment offense was calculated and dispassionate and against a

1 particularly vulnerable victim; his motive was trivial; and he failed to show adequate remorse for
2 the victim. These reasons were sufficient to justify a two-year denial.

3 Accordingly, the petition is denied.
4

5 Dated: 9/6/08



6 STEVEN VAN SICKLEN
7 Judge of the Superior Court
8

9 The clerk to give notice.
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1 Send copy of order to:
2 Department of Justice – State of California
3 Office of the Attorney General
300 S. Spring St.
3 Los Angeles, CA 90099-9126

4 Petitioner

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SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp FILED LOS ANGELES SUPERIOR COURT
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012		SEP 07 2007
PLAINTIFF/PETITIONER: JESSE PLAZA		JOHN A. CLARKE, CLERK BY <i>Joseph M. Pulido</i> DEPUTY Joseph M. Pulido
CLERK'S CERTIFICATE OF MAILING CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)		CASE NUMBER: BH004502

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- | | |
|--|--|
| <input type="checkbox"/> Order Extending Time | <input checked="" type="checkbox"/> Order re: Writ of Habeas Corpus |
| <input type="checkbox"/> Order to Show Cause | <input type="checkbox"/> Order |
| <input type="checkbox"/> Order for Informal Response | <input type="checkbox"/> Order re: |
| <input type="checkbox"/> Order for Supplemental Pleading | <input type="checkbox"/> Copy of Petition for Writ of Habeas Corpus for the Attorney General |

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

September 7, 2007
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By: *Joseph M. Pulido*, Clerk
Joseph M. Pulido

Jesse Plaza
H-12371
Correctional Training Facility
P.O. Box 689
Soledad, California 93960-0689

Department of Justice- State of California
Office of the Attorney General
300 South Spring Street
Los Angeles, California 90013

EXHIBIT C
Part 1 of 2

MC-275

Name JESSE PLAZA
 Address CTF CENTRAL F-338U
P.O. BOX 689
SOLEDAD, CA 93960-0689

CDC or ID Number H-12371

COURT OF APPEALS

SECOND APPELLATE DISTRICT

(Court)

PETITION FOR WRIT OF HABEAS CORPUS

JESSE PLAZA,
 Petitioner
 vs.
BEN CURRY, Warden,
 Respondent
Correctional Training Facility

No. _____
(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

- Read the entire form before answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court [as amended effective January 1, 2007]. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- | | |
|--|--|
| <input type="checkbox"/> A conviction | <input checked="" type="checkbox"/> Parole |
| <input type="checkbox"/> A sentence | <input type="checkbox"/> Credits |
| <input type="checkbox"/> Jail or prison conditions | <input type="checkbox"/> Prison discipline |

Other (specify): Illegal finding of unsuitability by the Board of Parole Hearings.

1. Your name: Jesse Plaza

2. Where are you incarcerated? Correctional Training Facility, Soledad, CA 93960-0689

3. Why are you in custody? Criminal Conviction Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

First Degree Murder

b. Penal or other code sections: Penal Code §187

c. Name and location of sentencing or committing court: Los Angeles Superior Court, Norwalk, CA

d. Case number: VA004108

e. Date convicted or committed: 7-20-91

f. Date sentenced: 9-28-91

g. Length of sentence: 25 years to life

h. When do you expect to be released? "unknown"

i. Were you represented by counsel in the trial court? Yes. No. If yes, state the attorney's name and address:

Stephen Garcia, Attorney at Law , address unknown

4. What was the LAST plea you entered? (check one)

Not guilty Guilty Nolo Contendere Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

Jury Judge without a jury Submitted on transcript Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

THE NINTH CIRCUIT COURT OF APPEALS HAS FOUND THAT THE MANDATORY LANGUAGE OF P.C. 3041 (b) IMPOSES AN AFFIRMATIVE OBLIGATION BY THE CALIFORNIA BOARD OF PAROLE HEARINGS TO GRANT PAROLE, WHICH CREATES A LEGALLY COGNIZABLE LIBERTY INTEREST IN PAROLE AND A PRESUMPTION THAT PAROLE RELEASE WILL BE GRANTED. THERE IS NO EVIDENCE HAVING AN "INDICIA OF RELIABILITY" THAT PETITIONER IS A CURRENT OR UNREASONABLE RISK TO SOCIETY. THE HEARING AND DECISION BY THE CALIFORNIA PAROLE BOARD WAS ARBITRARY AND CAPRICIOUS IN VIOLATION OF PETITIONER'S STATE AND FEDERAL DUE PROCESS RIGHTS.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Petitioner, JESSE PLAZA, petitions for a writ of habeas corpus and

by this verified petition alleges as follows:

I

Petitioner is in custody of the California Department of Corrections at the Correctional Training Facility in Soledad, California serving a term of 25 years to life following his conviction in 1991 in Los Angeles County Superior Court Case No. VA004108 wherein petitioner was convicted of first degree murder in violation of Penal Code section 187. Petitioner was received by the Department of Corrections on October 9, 1991, when his life term commenced. This petition is intended to give meaning to Petitioner, JESSE PLAZA, (hereinafter "Petitioner"), sentence of 25 years to life for 'first degree murder'. On May 1, 2006, Petitioner went before the Board of Parole Hearings for his initial parole. (Petitioner's minimum

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

1 eligible parole date is 1-25-07) for a finding of suitability, and the
2 setting of his term uniformly. Petitioner submits that the Board of
3 Parole Hearings (hereafter "Board") regulations, California Code of
4 regulations, Title 15, section 2402(a) DEMANDS that the Board set a
5 release date unless Petitioner currently presents an unreasonable risk
6 of danger to public safety. Petitioner submits that there is nothing
7 in the Board's decision indicating the basis for that belief, which
8 Petitioner discusses and proves *infra*.

9

10 II

11 On May 1, 2006, the Board conducted petitioner's Initial Parole
12 Consideration Hearing. The Board found petitioner unsuitable and denied
13 parole for a period of two years. (Exhibit "A" 89-93) In support of its
14 findings that petitioner currently posed an unreasonable risk to society,
15 the Board found that the "offense was carried out in an especially cruel
16 and callous manner", "carried out in a calculated manner", "The motive
17 for the crime was very trivial in that it was a gang related shooting",
18 and the unsupported conclusion that petitioner has refused to take
19 responsibility for his actions. Petitioner was, however, commended for
20 programming extremely well, commended for remaining disciplinary free,
21 obtaining a positive psychological evaluation, participating in AA and
22 NA, completing two vocations and securing positive parole plan. (Exhibit
23 "A", p. 89-93). Despite all the evidence supporting a granting of parole,

24 the Board found petitioner unsuitable for a grant of parole based on
25 the commitment offense, including and unsupported conclusion that
26 petitioner tries to minimize his responsibility.

27 //

28

III

Petitioner alleges that there was no evidence to support the Board's finding that he poses a current unreasonable risk if released. In fact, all current, reliable evidence presented to the Board shows that petitioner poses no risk if released. Petitioner further alleges that the Parole Board violated petitioner's statutory rights and his Fifth and Fourteenth Amendments (due process rights), when it refused to grant petitioner a parole date despite evidence supporting a finding that petitioner posed no unreasonable risk of harm. Furthermore, his continued confinement constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

IV

Petitioner also submits the Board spoke in meaningless generalities and never specified the exact nature of Petitioner's current character that would make Petitioner a danger to society. And by not doing so, the Board violated Penal Code §3041, which dictates that the Board shall normally set a parole release date at Petitioner's Initial Hearing. Petitioner, further submits that the issue raised in this Petition are of constitutional dimension, questioning the legality of Petitioner's confinement. An indeterminately sentence prisoner must be paroled when there is no evidence that Petitioner is a current or unreasonable risk to society. The California Supreme Court has recognized that parole applicants' possess a "protected liberty interest under the California

Due Process Clause". (In re Rosenkrantz, (2002) 29 Cal.4th 616, 660; cf. McQuillion v. Duncan (9th Cir. 2002) 306 F.3d 895, 901. It is well established that Courts may review the Board's parole decisions under

1 a highly deferential standard of review, and must reverse those decisions
2 if there is not "some evidence" in the record to support them.
3 (Rosenkrantz, supra 29 Cal.4th at 667; In re Smith (2003) 109 Cal.App.4th
4 489. Petitioner submits there is no evidence that Petitioner is currently
5 a threat to public safety.

6

7 PETITIONER NOW SUBMITS THE FOLLOWING POINTS AND AUTHORITIES IN SUPPORT

8 OF THIS PETITION FOR WRIT OF HABEAS CORPUS

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2

3 THE MURDER STATUTES TOGETHER WITH THE PAROLE STATUTES
4 IMPOSE AN AFFIRMATIVE OBLIGATION UPON THE BOARD TO
5 SET PAROLE DATES IN CASES LIKE THIS ONE. THE
6 REGULATIONS IMPLEMENT THOSE STATUTES

7 Under the Board's regulations, pursuant to Penal Code
8 §3041(b), a prisoner may be found unsuitable for parole if
9 the Board determines that the offense or a past offense and
10 its timing is of such gravity that a longer period of
11 incarceration is required in the interest of public safety.
12 The determination is made based on the standards set forth
13 by the Board's regulations. The principle guidelines in making
14 the determination is Cal. Code. Regs. §2401 (c)-(1-6):

15 (1) Commitment Offense. The prisoner committed the offense in
16 an especially heinous, atrocious or cruel manner. The factors
17 to be considered include:

18 (A) Multiple victims were attacked, injured, or killed
19 in the same or separate incidents.

20 (B) The offense was carried out in a dispassionate and
21 calculated manner, such as an execution-style murder.

22 (C) The victim was abused, defiled or mutilated during
23 or after the offense.

24 (D) The offense was carried out in a manner which
25 demonstrated an exceptionally callous disregard for human
26 suffering.

27 //

(E) The motive of the crime is inexplicable or very trivial in relation to the offense.

(2) Previous Record of Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age.

(3) Unstable Social History. The prisoner has a history of unstable or tumultuous relationships with others.

(4) Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

(5) Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense.

(6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail.

Circumstances (1), (2), and (4) reasonably reflect the sole specified and authorized statutory exception to setting parole release dates, for the current or a past convicted offense(s). Factor (E) of Circumstances (1), however, pertaining to the motive of the crime as being inexplicable, although typically stated by the board as a factor for denying parole, is a rare circumstance, as there is almost always, as here, an explanation

as to why the offense occurred. Whether the motive was trivial is another matter. As one court noted:

"The epistemological and ethical problems involved in the ascertainment and evaluation of motive are among the reasons the law has sought to avoid the subject. As one authority has stated, "[hardly any part of penal law is more settled than that motive is irrelevant."

(Hall, General Principles of Criminal Law (2d ed. 1960) at p. 88; see also Husak, Motive and Criminal Liability (1989) vol. 8, No. 1, Crim. Justice Ethics 3.)"

The court further explained:

"The offense committed by most prisoners serving life sentences is, of course, murder. Given the high value our society places upon life, there is no motive for unlawfully taking the life of another human being that could not be deemed "trivial". The Legislature has foreclosed that approach, however, by declaring that murderers with life sentences must "normally" be given release dates as they approach their minimum eligible release dates. (Pen. code, §3041, subd. (a)." (In re Scott, 119 Cal.App.4th 871, 892-893.)

It is therefore questionable whether the factor has any evidentiary value in this case. If the motive was indeed inexplicable "A person whose motive for a criminal act can not be

explained or is unintelligible is therefore unusually unpredictable and dangerous." (Id.) Such is not the case here.

The primary circumstance and factors considered to make the determination, §2402(d)(1)(B) and (D), have been explained by the courts. To qualify for the authorized exception, an offense must be exceptionally egregious. The court of appeal characterized this as follows:

"*In re Van Houten* (2004) 116 Cal.App.4th 339 [10 cal.Rptr.3d 406] illustrates the sort of gratuitous cruelty required. The prisoner in that case was involved in multiple stabbings of a woman with a knife and bayonet, While she was dying, the victim was made aware her husband was suffering a similarly gruesome fate. As stated by the court, "[t]hese acts of cruelty far exceeded the minimum necessary to stab a victim to death." (Id. at p. 351) Other examples of aggravated conduct reflecting an "exceptionally callous disregard for human suffering," are set forth in Board regulations relating to the matrix used to set base terms for life prisoners (§2403, subd. (b)); namely, "torture," as where the "[v]ictim was subjected to the prolonged infliction of physical pain through the use of non-deadly force prior to act resulting in death, " and "severe trauma." as where "[d]eath resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a

weapon not resulting in immediate death or actions calculated to induce terror in the victim." (Ibid.) (In re Scott, supra, 119 Cal.App.4th 871, 892.)

In this case there is no evidence of gratuitous cruelty or torture such as described in the foregoing. Moreover, even in such cases, involving those exceptional factors, the Board's regulations and suggested terms indicate parole suitability after serving the indicated base terms.

Circumstances (3) of the unsuitability factors, "Unstable Social History" appears to be related to the commission of violent past offenses and gravity thereof. It is not a factor in this case.

Circumstance (5), "Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense." is not applicable in this case, and the Psychological Report does not indicate any such assessment.

Circumstance (6), "Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail." This should reasonably relate to misconduct like that which may result in rescission proceedings as is enumerated in Cal. Code Regs., tit. 15, §2451, or more properly, be punished by the provisions of Cal. Code Regs., tit. 15, §2410, which provides for "Postconviction Credit", and not used as a substitute for statutory "suitability" provisions which specify only the gravity of the current or a past offense to deny parole.

This "circumstance" is often relied upon by the Board to deny parole to indeterminately sentenced prisoners repeatedly and

for years at a time. Yet, determinately sentenced prisoners might suffer only the loss of a few months of credit, once; for the same misconduct, which they can even get restored. As such, the Board's determinations that rely on such circumstances to deny parole, particularly beyond the indicated matrix base terms, is unauthorized by Penal Code 3041, is unfair, unreasonable and constitutes unequal punishment for the same conduct. A blatant violation of Petitioner's due process rights protected by the 5th & 14th Amendments of the United States Constitution.

RELIANCE ON THE COMMITMENT OFFENSE TO DENY PAROLE AT
ALL INITIAL HEARINGS AND ALMOST ALL SUBSEQUENT HEARINGS
IS INCONSISTENT WITH STATUTORY LANGUAGE AND CONTRARY TO
SUPREME COURT AUTHORITY

The Board's reliance on the commitment offense to deny parole at all initial hearings and almost all subsequent hearings fails to give effect to the statutory minimum terms despite Penal Code §3041 language that parole shall normally be granted at the initial hearing. The Board promulgated regulations pursuant to Penal Code §3041(a) which include standardized gravity matrices, but routinely denies parole for the same circumstances and factors specifying appropriate terms. (See Cal. Code Regs., tit. 15, §2400 et seq., footnotes citing implementation authority.)

Although it is presumed that the Board performs its duties lawfully, it is hardly debatable that the Board does not "normally" set parole release dates, as a matter of policy. And when it does, in about 2% of cases, the Governor reverses most of those, like here, as a matter policy, where there is no substantial evidence to support the decision. See, for example, In re Capistran, (2003) 107 Cal.App.4th 1297, In re Mark Smith, (2003) 109 Cal.App.4th 489; In re Ernest Smith, (2003) 114 Cal.App.4th 343, to name a few published cases. Because of the minimal "evidence" required under the "some evidence" standard, most of the denials and reversals of parole withstand court challenges. release on parole presumed by statutory language gives rise to a substantial right, but has been disregarded. the

great majority of indeterminately sentenced prisoners have been repeatedly denied parole, but would have been released long ago under reasonable administration of the statutes and regulations.

"The Court has an obligation, however, to look beyond the facial validity of a statute that is subject to possible unconstitutional administration since a "law though 'fair on its face and impartial in appearance' may be open to serious abuses in administration and courts may be imposed upon if the substantial rights of the persons charged are not adequately safeguarded at every stage of the proceedings." Minnesota v. Probate Court (1940) 309 U.S. 270, 277.

Although the most recent interpretation of the statute at issue now holds that proportionality or comparision of like offenses is not required, i.e., In re Dannenberg (2005) 34 Cal.4th 1061, the Ninth Circuit has previously stated:

"While the interpretation gloss on the statute may bind this court as a matter of statutory construction, we are not, however, similarly bound as to the constitutional effect of the construction." McSherry, 880 F.2d at 1053" (Aponte v. Gomez, 993 F.2d 705 (9th Cir. 1993) (emphasis added)

This most recent interpretation of the statutes is

inconsistent with decisions and history leading up to the changes in the parole statutes, which prior decisions recognized, as previously discussed:

"In contrast, by altering the statutory scheme and enacting the DSL, the Legislature recited specifically that it "finds and declares that the purpose of imprisonment for crime is punishment." (Pen. Code §1170, subd. (a)(1); all subsequent statutory references are to this code.) The new law provides that an inmate's "release date shall be set in manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public, and that will comply with the sentencing rules that the judicial council may issue and any sentencing information relevant to the setting of parole release dates. The board shall establish criteria for the setting of parole release dates and so doing shall consider the number of victims of the crime for which the prisoner is sentenced and other factors in mitigation and aggravation of the crime." (§3041, subd. (a), italics added.) The present parole guidelines were promulgated pursuant to the new act. Thus, the guidelines are not mere administrative responses to the Board's internal shifting discretion but rather reflect basic legislative alterations in the underlying parole scheme." (*In re Stanworth* (1982) 33 Cal.3d 176, 182.)
(Underlining emphasis added.)

Clearly, the interpretation of the law shortly after it was changed was that the Board's discretion was limited by the legislative alterations and guidelines. The changes were clearly intended to place limits on the Board's discretion:

"That, the Montana statute places significant limits on the Board's discretion is further demonstrated by its replacement of an earlier statute which allowed absolute discretion ..." Board of Pardons v. Allen, 482 U.S. 369.

Like with the Montana statute, in California the former Penal Code §3041 was completely changed, mandating the establishment of criteria for the normal setting of parole dates. Furthermore, Penal code §3041(b) clearly spells out why the board may require an extended period of incarceration. Because the Governor is bound by the same standards as the Board, the same would apply to the Governor. The current interpretive gloss on the parole and related statutes reverts plain statutory intent to the previous parole scheme by judicial omission of part of the whole, and violates principles of statutory construction, offending due process and ex post facto law.

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THE "SOME EVIDENCE" STANDARD MUST "TEND LOGICALLY", AND BY "REASONABLE INFERENCE" TO ESTABLISH A FACT RELEVANT TO PETITIONER'S SUITABILITY FOR PAROLE.

Petitioner, denies the "some evidence" standard used by the Board satisfied the requirements under both state and federal due process. To satisfy the "some evidence" standard of Judicial Review of the Board's ultimate decision, only a "modicum of evidence is required". Rosenkrantz, 29 Cal.4th at 677; Hill, supra, 427 U.S. at 456. However, the "some evidence" standard applies to evidentiary sufficiency and is not a substitute for other due process requirements, Edward v. Balisok, (1977) 520 U.S. 641, 648, such as the Board's own preponderance of material and relevant evidence. (See Cal.Code of Regualtions, tit 15, section 2000 (50)(63)(91). Thus, to determine whether the Board has fulfilled it's minimal due process procedural requirements, a reviewing Court looks not first at the decision, but the process in which it arrived at that decision. Balisok, supra, Ibid.

Here the Board continues to interpret the "some evidence" standard illegally. The Boards decision in this case failed to point to evidence demonstrating that Petitioner currently presents an unreasonable risk of danger to society - the ultimate question in determining Petitioner's suitability for parole (CCR, Tit. 15, §2403, subd. (a) For this reason, the evidence underlying the Board's decision does not tend logically and by reasonable inference, to establish a fact relevant to the inmate's suitability for parole. (Morrall, supra, 102 Cal.App.4th

at pp. 298-299). The discretion of the Board to determine parole suitability, although broad, is not absolute, and the Board's decisions must be supported by "some evidence" (*In re Powell*, (1988) 45 Cal.3d 894, 902-904; see also *Terhune v. Superior Court*, (1998) 65 Cal.App.4th 864, 872-873; *In re Minnis* (1972) 7 Cal.3d 639, 646-647.

The United States Supreme Court has made it clear that the "some evidence" standard discussed in *Superintendent v. Hill* (1985) 472 U.S. 445, is only one aspect of judicial review for compliance with minimum standards of due process. The California Legislature has given the Board guidelines to follow in evaluating a parolee's eligibility for parole, mandating that the Board "shall normally" set a parole release date... "in a manner that will provide "uniform terms" for offenses of similar gravity and magnitude in respect to their threat to the public"... (Id., quoting Penal Code §3041, subd. (a).) The Board is required to "establish criteria for the setting of parole release dates." (Ibid.) However, the Board lacks discretion to promulgate regulations that are inconsistent with governing statutes, and the judicial branch has the final word on questions of legal interpretation." (Id., citing *Terbune v. Superior Court*, supra, 65 Cal.App.4th 864, 873)(emphasis added).

Petitioner asserts that the "some evidence" standard is being applied arbitrarily by the reviewing Court's in the State of California. The Courts of California, both State and Federal, seem to have settled in for the "some evidence" standard of Judicial Review. (See, e.g., *McQuillion v Duncan*, 306 F.3d 895 (9th cir. 2002), and in *In re Rosenkrantz*, 29 Cal.4th 616 (2002).

without taking into consideration the "substantial evidence" standard which is required by reviewing courts Consolidated Edison Co. vs NLRB, 305 U.S. 197 (1939) (See Page 9)

The "some evidence" standard derives from the United States Supreme Court decision in Superintendent v. Hill, 472 U.S. 445; 105 S.Ct. 276 (1985), and is expressly a standard of "Judicial Review" for reviewing Court's, not the Board's Standard

The first California decision applying the "some evidence" standard of Hill was in the case of In re Powell, 45 Cal.3d 894 (1988). The Powell case was one where the Board of Prison Terms rescinded a parole grant based on a psychological report. In his petition, Powell argued for the "independent judgment" standard to the facts before the Board, or alternatively, the "substantial evidence" test. The People argued for the deferential "some evidence" test. Powell argued for the independent judgment test analogizing habeas corpus proceedings to administrative mandamus proceedings under California Code of Civil Procedure section 1094.5. That code section provides for review of administrative orders or decisions; in some cases it applies the independent judgment test while in other circumstances the substantial evidence test. If the former, and abuse of discretion is established when the Court, exercising its independent judgment determines the administrative findings are not supported by the weight of the evidence. If the latter, the Court must accept all evidence favorable to the Respondent as true and disregard any unfavorable evidence, if the evidence so viewed is sufficient as a matter of law, the order or decision must be affirmed. In rejecting Powell's argument, the court held that standard only

applies when an administrative decision affects a vested right. This is a pivotal point. The Powell Court determined that "a prison inmate has no vested right in his prospective liberty on a parole release date". (id. at 903). It cited to pre-1977 cases of *In re Fain*, 65 Cal.App.3d 376 (1976), and to *In re McLain*, 5 Cal.2d 78, 87 (1960), also cited by Fain, *supra*. However, two critical facts were not present at the time of the decision, (1) there was no liberty interest created by pre-1977 section 3041; and (2) the California Supreme Court had not defined post-1977 section 3041, as having vested a liberty interest in a parole release date, as it did later in the Rosenkrantz decision 29 cal.4th 616 (2002), following on the heels of *McQuillion v. Duncan*, 306 F.3d 895, 901-903 (9th cir. 2002), which interpreted Section 3041 as creating an "expectancy of release" that was a cognizable liberty interest protected by federal due process. Thus, the Powell Court was wrong about whether a vested right was involved, and its decision to apply the "some evidence" standard instead of the "independent judgment test" or "substantial evidence" was also wrong because it was based on an incorrect interpretation of law.

Yet, the California Supreme Court in the Rosenkrantz case, 29 Cal.4th 616, applied the "some evidence" standard of *Superintendent v. Hill*, 472 U.S. 445 (1985), in such language as to confuse the lower Courts as to its specific purpose. i.e., the standard of judicial review. It carried forward the "some evidence" standard originally applied in *In re Powell*, 45 Cal.3d 894 (1988). The Rosenkrantz Court did not make clear that the "some evidence" standard was not a standard applied by the board

itself as a standard of proof in its deliberations. It appears that the omission by the Rosenkrantz Court of any articulation of what the Board's standard of evidence would be as a critical component to the deliberative process of weighing and balancing of evidence, has resulted in the Board not applying their own preponderance of relevant and material evidence standard (CCR, Title 15, Div. 2, Section 2000; (50) Good Cause (63) Material Evidence (91) Relevant Evidence), thereby rendering every decision to grant or deny parole completely standardless, and thus arbitrary and capricious.

Typically in California, the judicial standard of review of the ultimate decision of the Board of Parole Hearings denying parole to a prisoner has been the "some evidence" standard. *In re Dannenberg* (2005) 34 Cal.4th 1061; *In re Ramirez* (2001) 94 Cal.App.4th 549, 564; *In re Rosenkrantz*, [Rosenkrantz V] (2002) 29 Cal.4th 565, 616. Although both Rosenkrantz and Dannenberg thus affirmed the importance of judicial review of the board decisions, the decision's provide less than clear guidance as to the proper application of the "some evidence" standard articulated in both decisions. Of particular concern is the Dannenberg Court's brief discussion in dicta of the "commitment offense" factor, which can improperly be read as granting to the Board the ability to deny parole on the basis of almost any fact imaginable. As a result, there is a real risk the State will interpret the standard to assert, de facto, the power it has been expressly denied; effective immunity from meaningful judicial review of parole decision. It should be recognized, however, that

several courts are struggling to determine exactly how this standard applies. While other Court's (post Dannenberg & Rosenkratz) has held that the "some evidence" standard must apply to current dangerousness. While interpreting this standard the California Court of Appeals, Second Appellate District in the case of *In re WEN LEE*, (Oct. 17, 2006, B188831)(2006 DJDAR 13961) the Court held;

....We conclude, however, that the governor erred. The test is not whether some evidence supports the reasons the Governor cites for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety. (Cal.Code Regs., tit. 15, §2402, subd. (a) [parole denied if prisoner "will pose an unreasonable risk of danger to society if released from prison]; see *In re Scott* (2005) 133 Cal.App.4th 573, 595 ["The commitment offense can negate suitability [for parole] only if circumstances of the crime ... rationally indicate that the offender will present an unreasonable public safety risk if released from prison"] but see *In re Lowe* (2005) 130 Cal.App.4th 1405 [suggested "some evidence" applies to the factors, not dangerousness]. Some evidence of the existence of a particular factor does not necessarily equate to some evidence ~~the parolee's release unreasonably endangers~~ public safety.

In the case of *In re Elkins*, (Oct. 31, 2006, A111925) the

Court of Appeals, First Appellate District, held that;

... "The 'some evidence' standard is extremely deferential and reasonably cannot be compared to the standard of review involved in ... considering whether substantial evidence supports the findings" , nevertheless, it requires" ' "some indicia of reliability" ' " (Scott II, supra, 133 Cal.App.4th at p. 591, quoting Biggs v. Terbune, (9th Cir. 2003) 334 F.3d 910, 915) and "may be understood as meaning that suitability determinations must have some rational basis in fact" (Scott II, at p. 590, fn. 6).

One thing is for certain, even if a mere "some evidence" standard is to apply in this review, that standard is only a vehicle for the Court's review of the Board's decision, not a standard for the Board itself to apply. The findings to support that initial decision by the Board to deny parole, however, must be that the record indicates the Petitioner, poses a "current" danger to the public. That finding can not be based on such flimsy evidence as to render it mere whim or caprice. (See In re Ramirez, supra, at 564; See also In re Powell, (1988). To the contrary, as set forth herein, the Board's decision must be made under the preponderance of evidence standard. (Cal.Code of Reg., Title 15, Div. 2, section 2000 (50) Good Cause).

Petitioner denies the "some evidence" standard used By the Board satisfied the requirements under both state and federal due

process. Petitioner asserts reliance on the Commitment offense does not satisfy the "some evidence" standard. There is no question that under Rosenkrantz and Dannenberg the statutory "commitment offense" factor is relevant, and that it may at times be enough to deny parole on its own, neither Rosenkrantz nor Dannenberg stands for the principle that the commitment offense is always enough by itself. In fact, both cases affirmatively state that reliance on the commitment offense alone might, in some circumstances, rise to the level of a due process violation. That conclusion is consistent with the concern raised by the Ninth Circuit in *Biggs v. Terbune*, that the reliance on an ever-frozen, unchanging factor - such as the commitment offense - in denying parole may in certain instances violate due process. This point was also addressed in the case of *In re Ramirez*, 94 Cal.App.4th 549, at 571 (2001), when the Court noted that reliance on the crime after 17 years in prison was arbitrary. Petitioner has been incarcerated 17 years. While the proportionality aspects of the *Ramirez* decision were disapproved by the California Supreme court decision in *In re Danneneberg*, the entirety of *Ramirez* decision, including this aspect, was not disapproved. Therefore, the Board's reliance on the commitment offense violates due process. The predictive value of the crime after 17 years of incarceration is zero. Furthermore, in the case of *In re Scott*, 34 Cal.Rptr.3d 905 (Cal.App.1 Dist. 2005), the Court clearly reaffirmed the rationale of the *Ramirez* Court when it declared ..."Parole is the rule rather than the exception".... Thus, the California Board of Parole Hearings continuous use of the "some evidence" standard as their proper

standard of review is inappropriate, thus, illegal. Furthermore, reviewing Courts using the "some evidence" standard violates principles of appellate review. Substantial evidence is the standard required for a reviewing Court. *Consolidated Edison Co. of New York v. NLRB*, 305 U.S. 197 (1939). It is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Chrysler v. U.S. Environment Protection Agency*, C.A., 631 F.2d 865, 890. Under a proper analysis, the "substantial evidence" test, and not a "some evidence" review is the appropriate standard.

**ALL RELEVANT AND RELIABLE POST-CONVICTION EVIDENCE
MUST BE GIVEN THE REQUIRED CONSIDERATION IN FAVOR
OF PETITIONER IN LIGHT OF THE EVIDENCE PRESENTED**

Petitioner submits that the Board bases its reasons for Petitioner's continued incarceration on historical facts that can never change, thus ignoring the uncontradicted evidence of Petitioner's rehabilitation. Petitioner has achieved the very goal that is hailed by our judicial and correctional systems, coming to prison, turning his life around and committing himself wholeheartedly to bettering himself and the world around him. Petitioner asserts there is no evidence that Petitioner is currently a threat to public safety. At Petitioner's hearing the Board denied Petitioner parole using static factors, despite overwhelming evidence showing Petitioner's rehabilitation. Petitioner asserts he has taken every available step to improve his life, pay his debt to society, and prepare himself for eventual release, as it is required under penal code §3041 for eligible prisoners serving indeterminate sentences. The Board's reliance on the Commitment Offense as satisfying the "some evidence" standard of review is without merit, after removing the facts erroneously relied upon, relied exclusively upon the Commitment Offense and failed to weigh and consider Petitioner's remorse,, positive psychological profile, lack of future dangerousness, and both realistic and positive parole plans including housing, education, and employment. The Board is required to consider all relevant information about a prisoner, not simply his commitment offense. His "risk of danger to society

is to be assessed in light of all relevant information available to the panel. (Cal. Code Regs., tit. 15, §2402(b)).

Under the view of the California parole process, it is clear that the nature of the commitment offense can constitute a basis for denial only to the extent it sheds light on whether a prisoner "now poses a risk of danger to society". Relying on the offense after years in custody and clear evidence of rehabilitation becomes arbitrary. At some point along the parole consideration process, that excuse to refuse to set a parole date enlight of exemplary conduct and behavior becomes arbitrary, and the term, although initially valid, becomes disproportionate and therefore unlawful. As time passes, and as the appropriate uniform term for the offense approaches, the offense itself sheds less and less light on how a prisoner will behave on the outside. His record in prison, his mental health, his conduct and achievements, all shed more light on his readiness to rejoin society. (see Deluna, supra 2005 WL 268045, 6). a defendant's postcommitment institutional behavior is relevant to his suitability for parole [citing §2402, subd. (d)(9)], and has both positive and realistic parole plans (see In re Deluna, supra, 2005 WL 268045, 5- Stable Relationships with others favor parole (15 CCR §2402 subd. (d)(9), All these factors favor his release. There is no evidence Petitioner now poses a risk of danger to society.

The Board's reasons finding petitioner unsuitable is unreasonable and an abuse of discretion enlight of the evidence presented to the Board by petitioner and the Department of Corrections and Rehabilitation Psychological Department and Counselor.

At the hearing, Correctional Counselor I, T. Verdasoto testified as to Petitioner's programming, and his future residence and employment when paroled:

Therapy and Self-Help Activities: Since Plaza's incarceration, he has participated in Alcoholics Anonymous, Inmate Education Advisory Committee, Bible Study, the Impact Program, Narcotics Anonymous, served as a Deacon, and was a member of the Protestant Choir.

Postconviction Factors: Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/22/92, Plaza was transferred to Calipatria where his custody was reduced to Close B. While in Calipatria, he worked in the culinary, pre-voc. and Compute Programming. Plaza was again transferred to CSP-LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the drycleaning, voc electrical shop, and air cond. refrigerator and heating. On 12/16/97 he was transferred to Avenal where he was in Computer Programming. On 3/13/98 he was transferred to CTF Soledad North Facility where he was assigned to the yard crew 4/7/98 to 4/28/98, and then to PIA Textiles. On 12/31/98 Plaza went to CMC East as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification,

Close B was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF Central Facility, Plaza has been assigned to wing porter, culinary, dental assistant and again culinary, where he remains assigned.

Disciplinay History: Plaza has remained disciplinary free throughout his incarceration

Residence: Plaza plans on living with his brother, Hector Plaza. Hector's address is 353 Carla Dr., Simi Valley, California 93063. His phone number is (805) 581-6323

Employment: Plaza plans on working at Telair International 4175 Gardain Street, Simi Valley, CA 93063, phone (805) 578-7303.

Assessment: In review of Plaza's parole plans, this counselor does not foresee any problems, however, it is recommended that Plaza updates his support letters prior to his hearing. (see Exhibit "B")

Dr. M. Macomber testified as to Petitioner's his current mental stability and his lack of present and future dangerous:

Psychiatric and Medical History: There is no

psychiatric history. There is no history of serious accidents or head injuries or seizures. His health is good.

Current Mental Status/Treatment Needs: Mr. Plaza related in a serious, sober, and cooperative manner. Mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. He does speak excellent English as well as Spanish. Affect was appropriate. There was no evidence of anxiety or depression. Eye contact was good. His memory was intact. His judgment was intact. His insight and self-awareness were good.

Mr. Plaza has spent a great deal of time in prison trying to improve himself. He currently is attending Coastline College, working on his Associate of Arts Degree. His grades are very good. Also, he has obtained a certificate as a home inspector from professional career institute in Georgia by correspondence. In addition, he has completed several courses toward self-improvement. He has completed a Prison Fellowship Course in Parenting, Anger Management, another 12 week anger management class, Fathers Behind Bars Activity Group, Family Effectiveness Training and Harmony in the Home, Anger Management Course, Christian Basics Class, Teddy Bear Drive Benefiting Children in Crisis, a job

success course, Communicable Diseases, Impact Program focusing on the victim's rights, Christian Living Course, Laubach Literacy Tutor Program, and the Salvation Army Bible Correspondence Course.

Current Diagnostic Impression: Axis I- Drug and alcohol use by history; Axis II- No personality disorder; Axis III- No physical disorder; Axis IV- Life term incarceration; Axis V- Current GAF: 95.

Assessment of Dangerousness: (A) In considering potential for dangerous behavior in the institution. Mr. Plaza has remained entirely disciplinary free. This is commendable. This is very difficult to do. At this time in prison, we are having frequent racial riots. It is very difficult for a Hispanic male to disassociate himself from this activity, which can spontaneously occur in front of him, and if he doesn't get involved, he will receive retaliation. In this case, remaining disciplinary free is a very difficult and commendable achievement. There is no evidence that he has ever been involved in riots, possession of weapons, assaults on others, or threats of any kind. As a result, it is evident that his potential for dangerous behavior in comparison to other inmates is definitely below average.

Mr. Plaza has a chrono from Captain Guerra, in which it

was stated that he had been hand picked to work as a communicator, working as a mediator between the two groups in the institution that had been involved in a riot against each other. Due to his ability to mediate between the groups and to get them to agree to non violence towards each other, the riot that occurred at that time was resolved peacefully, and the result was that the institution was able to unlock everybody and proceed with the program.

(B) In considering potential for dangerous behavior in the community, Mr. Plaza has no prior arrests for violence before the commitment offense. He did receive an arrest as an adult in 1983 for spraying a one inch diameter dot on the wall. He has remained disciplinary free in the institution. In order to determine his risk level on parole, the Level of Service Inventory-Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, current adjustment, and other factors to determine current risk level. On this measure he obtained a score of 3.6 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 96 of them. This is a very low risk level. As a result, he poses no more threat to society than the average citizen in the community, and probably less threat to society at this point in his life.

(C) At the time of the offense, drugs and alcohol were a problem; however, at this point in his life this no longer is an issue. Therefore, there are no significant risk factors in this case.

Clinician Observation/Comments/Reccomendations: There are no mental or emotional problems in this case that would interfere with routine parole planning. Mr. Plaza has obtained vocational training in several areas. He is currently working as a meat cutter in culinary. He has skills in vocational dry cleaning, as well as in vocational air conditioning, refrigeration and heating. He also has a job offer waiting for him upon release. He has very strong family support in the community. All these factors are good indicators of positive parole success. He has maintained his marriage, and his wife continues to be supportive and involved in his life. He maintains constant contact with his three children. Due to his study of the Bible and his commitment to the Christian way of life, he no longer has the irresponsible values and lifestyle that he did prior to the commitment offense. All these factors indicate that his prognosis for successful adjustment in the community is excellent. (see Exhibit "C")

Petitioner asserts that the rehabilitative evidence submitted by Petitioner and both the life Evaluation report and Psychological report is supportive of release contrary to the Board's specious findings. the Biggs court addressed the Boards illegal usage of needed therapy and other illegal reasons to justify a highly illegal denial.

"The record in this case and the transcripts of Biggs hearing before the Board clearly show that many conclusions and factors relied on by the Board were devoid of evidentiary basis".

Petitioner submits that the record in this case is also devoid of evidentiary basis as to the Board's findings that evidence presented is not supportive of release, which violates due process. Petitioner further submits that despite the overwhelming evidence that Petitioner does not present a current risk to public safety. The Board arbitrarily found petitioner unsuitable for release. Petitioner asserts that the real reason given by the Board indicative of unsuitability is the commitment offense, and if allowed to identify the unchanging circumstances as indicative of unsuitability, this would put Petitioner in an impossible situation, where no matter what he shows in terms of positive behavior, reformation, self-help, work skills, parole plans, on just rehabilitation in general, he would never be able to overcome the unchanging facts of the crime. The only logical application of constitutional due process dictates what the Court in Irons v. Warden, 358 F.supp.2d 936, 947, (E.D.Cal. 2005) held,

, i.e., that any denial requires the presence of some in-prison behavior showing that the inmate **currently** presents an unreasonable risk of danger if paroled.

Here the facts of the crime have been the only real reason for denying parole. yet, those facts have never been tied to **current** behavior showing that Petitioner still presents an unreasonable risk at this time. A rule requiring the presence of in-prison adverse behavior to justify a denial based on the crime simply recognizes what the 9th Circuit in Biggs alluded to when it talked of the rehabilitative goals of the system, and the need to take into consideration that a person can rehabilitate themselves. This seems to be missing from the Board's current agenda and policy. This denies to Petitioner the process to which he is constitutionally due.

At this point, Petitioner has been incarcerated over 23 years (including pre- & post-conviction credit). His programming clearly shows his full rehabilitation. In drawing the line as to when a denial becomes arbitrary, that line has definitely been crossed in this case, as the Board cannot present factual findings showing a continued risk of danger based on the rehabilitative evidence presented. To the contrary, the in-prison facts are exclusively positive.

As Ramirez noted (Ramirez, 94 Cal.App.4th at 549), the paroling authority must do more than merely commend Petitioner ~~for the hard work done to rehabilitate himself while in prison.~~

They must actually consider these factors "as... circumstance[s] tending to show his suitability for parole." Ramirez *supra* 94 Cal.App.4th at 571-72 [emphasis in original]. Of course, all the

Board did with petitioner's extensive accomplishments was to brush them aside with several terse lines and issue superficial compliments. Obviously, no serious consideration was ever given to Petitioner's outstanding programming. Yet, the Biggs rule is clear that if an inmate "continue[s] to demonstrate exemplary behavior and evidence of rehabilitation, denying him a parole date simply because of the nature of [his] offense and prior conduct would raise serious questions involving his liberty interest in parole". *Biggs v. Terbune*, supra, 334 F.3d at 916.

Here, the evidence of actual rehabilitation is beyond dispute.

The Board's inability to find anything in his current programming, demeanor or psychological condition to justify a finding of current dangerousness, the Board continuously falls back on the immutable and unchanging facts, of the crime, to base its findings of unsuitability.

Again as noted above, wherever one draws the line as to when the reliance on the unchanging facts of the commitment offense becomes a violation of due process in the abstract, under the facts here after 17 years, it clearly has passed here. Thus, the Board must do more than simply commend Petitioner for his efforts and accomplishments, and must consider them as favoring parole in evaluating suitability. *Ramirez*, supra, at 572. The Board must do this even if the factors of the commitment offense in the abstract can be said to be sufficient to deny petitioner parole.

Petitioner asserts that he has continued to be a model inmate, yet, continues to be deprived the benefits of his exemplary rehabilitation by the California Board of Parole

Hearings. The only real issue at a parole hearing is whether the inmate currently poses an unreasonable risk of danger to the public if paroled. This must be determined by an inmates post-conviction evidence of rehabilitation. petitioner has met every prerequisite condition that warrants a finding of suitability. Because there is no evidence to support a finding that Petitioner poses a current threat to public safety of any magnitude, let alone an unreasonable level of threat, the decision denying parole can not be sustained.

CONCLUSION

The Parole Board's decision was arbitrary and capricious. Petitioner did not receive fair hearing from the Board of Parole Hearings, nor will he ever.

The Court must order Petitioner released or at the very least, direct the Board of Parole Hearings to issue a decision within ten days granting Petitioner parole, setting his term as prescribed by the Legislature and the Statutes.

Based on the foregoing reasons and the entire file herein, Petitioner submits that the hearing was a sham and a farce in violation of the intent of the Legislature when it enacted Penal Code §3041 et seq. 30 years ago.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this _____ day of _____, 2007, Correctional Training Facility, Soledad, Ca
93960-0689.

Jesse Plaza

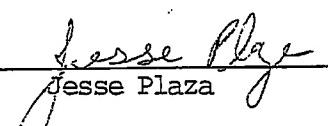
Jesse Plaza, Petitioner In Pro Per

1 PRAYER FOR RELIEF
2

- 3 1. Issue an Order to Show Cause on an expedited basis directing
4 Respondent to file a Return pursuant to Rule 4.551, California
5 Rules of Court;
6 2. Issue a Writ of Habeas Corpus;
7 3. Order Respondent to provide Petitioner with reasonable discovery;
8 4. Conduct an Evidentiary Hearing;
9 5. Declare the rights of the parties;
10 6. Order injunctive relief;
11 7. Appoint Counsel;
12 8. Issue an order directing Petitioner released on parole;
13 9. Direct Respondent to release Petitioner forthwith upon the
14 granting of his release on parole;
15 10. Issue an Order directing Petitioner released on his own
16 recognizance or on reasonable bail; and
17 11. Grant all other relief necessary to promote the ends of justice.
18

19 Dated: OCT. 1, 2007
20

21 Respectfully submitted
22

23 
24 _____
25 Jesse Plaza

26 In Pro per
27
28

8. Did you appeal from the conviction, sentence, or commitment? Yes. No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):
California Court of Appeals

b. Result: denied c. Date of decision: unknown

d. Case number or citation of opinion, if known: unknown

e. Issues raised: (1) n/a

(2)

(3)

f. Were you represented by counsel on appeal? Yes. No. If yes, state the attorney's name and address, if known:

unknown

9. Did you seek review in the California Supreme Court? Yes. No. If yes, give the following information:

a. Result: denied b. Date of decision: unknown

c. Case number or citation of opinion, if known: unknown

d. Issues raised: (1) n/a

(2)

(3)

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

n/a

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

As of May 1, 2004, Exhaustion of the Administrative Appeal Process has been

eliminated. Title 15 regulations governing section 2050-2056 has been repealed.

b. Did you seek the highest level of administrative review available? Yes. No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? Yes. If yes, continue with number 13. No. If no, skip to number 15. MC-275

13. a. (1) Name of court: SUPERIOR COURT, COUNTY OF LOS ANGELES

(2) Nature of proceeding (for example, "habeas corpus petition"): HABEAS CORPUS

(3) Issues raised: (a) ILLEGAL FINDING OF UNSUITABILITY BY THE BOARD OF PAROLE HEARINGS.

(b) _____

(4) Result (Attach order or explain why unavailable): DENIED (ATTACHED HERETO AS EXHIBIT "D")

(5) Date of decision: SEPTEMBER 6, 2007

b. (1) Name of court: N/A

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

N/A

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

NO DELAYS

16. Are you presently represented by counsel? Yes. No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? Yes. No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

THIS COURT HAS JURISDICTION

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: OCT. 1, 2007


(SIGNATURE OF PETITIONER)

PROOF OF SERVICE BY MAIL
BY PERSON IN STATE CUSTODY
(C.C.P. SS 1013(A), 2015,5)

I, Jesse Plaza, declare:

I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterrey, State of California. My prison address is:

Jesse Plaza, CDCR #: H-12371
CORRECTIONAL TRAINING FACILITY
P.O. BOX 689, CELL #: F-338U
SOLEDAD, CA 93960-0689.

On OCT. 1, 2007, I served the attached:

PETITION FOR WRIT OF HABEAS CORPUS

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

COURT OF APPEALS
SECOND APPELLATE DISTRICT
300 S. Spring Street
Second Floor, North Tower
Los Angeles, CA 90013-1204

OFFICE OF THE ATTORNEY GENERAL
RONALD REAGAN BUILDING
300 S. Spring Street
Los Angeles, CA 90099-9126

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on OCT. 1, 2007.

Jesse Plaza
Declarant

1 Jesse Plaza
2 H12371 - F338U
3 P.O. Box 689
Soledad, CA. 93960

4

5

6 IN THE COURT OF APPEALS
7 SECOND APPELLATE DISTRICT

8 Jesse Plaza
Petitioner,
9 vs.
10 Ben Curry, et al.,
11 Respondent.

No:
Super. Ct: BH004502

12 EXHIBITS IN SUPPORT OF PETITION
13 AND MEMORANDUM OF POINTS AND
14 AUTHORITIES

15
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EXHIBIT A

INITIAL PAROLE CONSIDERATION HEARING
STATE OF CALIFORNIA
BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration)
Hearing of:) CDC Number H-12371
JESUS PLAZA)
-----)

INMATE
COPY

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

MAY 1, 2006

PANEL PRESENT:

ARCHIE JOE BIGGERS, Presiding Commissioner
ROLANDO MEJIA, Deputy Commissioner

OTHERS PRESENT:

JESUS PLAZA, Inmate
LAWRENCE MORRISON, Deputy District Attorney
KATERA E. RUTLEDGE, Attorney for Inmate

CORRECTIONS TO THE DECISION HAVE BEEN MADE

No See Review of Hearing
Yes Transcript Memorandum

Ruby M. Dougherty, Peters Shorthand Reporting

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1 P R O C E E D I N G S

2 DEPUTY COMMISSIONER MEJIA: We're on
3 record.

4 PRESIDING COMMISSIONER BIGGERS: Okay.

5 This is initial parole consideration hearing for
6 Jesus Plaza, P-L-A-Z-A, CDC No. H-12371. We're
7 located at the Correctional Training Facility in
8 Soledad. Inmate was received on October 9, 1991
9 from Los Angeles County. The life term began on
10 October 9, 1991 and the minimum eligible parole
11 date is January 25th, 2007. The controlling
12 offense for which the inmate has been committed
13 is murder case number -- first-degree murder
14 with a weapon. Case No. is VA004108. That's a
15 violation on criminal code PC187. The inmate
16 received a term of 25 years to life, with a
17 minimum eligible parole date of 1/25/07. Now
18 this hearing's being tape-recorded and for the
19 purpose of voice-identification each of us will
20 state our first and last name, spelling our last
21 name. When we get to you Mr. Plaza, if you
22 would please give us your CDC number after you
23 spell your last name. I will start and move to
24 my left. My name is Archie Joe Biggers,

25 B-I-G-G-E-R-S, and I'm a Commissioner.

26 DEPUTY COMMISSIONER MEJIA: Rolando
27 Mejia, M-E-J-I-A, Deputy Commissioner.

1 DEPUTY DISTRICT ATTORNEY MORRISON:

2 Lawrence Morrison, M-O-R-R-I-S-O-N, Los Angeles

3 District Attorney.

4 ATTORNEY RUTLEDGE: Katera E. Rutledge,
5 R-U-T-L-E-D-G-E, attorney for Mr. Plaza.

6 INMATE PLAZA: My name is Jesus Plaza,
7 last -- CDC number is H-12371.

8 [Recording equipment malfunction, placement of
9 equipment, background noise, and volume of
10 participants resulted in indiscernible content.]

11 PRESIDING COMMISSIONER BIGGERS: Okay.

12 Thanks to all of you. Mr. Perez is there an ADA
13 statement that was passed over there to you? Do
14 you see that? It should have been right next
15 to--

16 INMATE PLAZA: (Indiscernible).

17 PRESIDING COMMISSIONER BIGGERS: -- would
18 you please read that out loud for us?

19 INMATE PLAZA: "The Americans with
20 Disability Act, ADA, is a law to
21 help people with disabilities.

22 Disabilities are problems that
23 make it harder for some people to
24 ~~see, hear, breathe, talk, walk,~~
25 learn, think, work, or take care
26 of themselves than it is for
27 others. Nobody can be kept out of

1 public places or activities
2 because of a disability. If you
3 have a disability you have the
4 right to ask for help to get ready
5 for your BPT hearing, get to the
6 hearing, talk, read forms and
7 papers, and understand the hearing
8 process. BPT will look at what
9 you ask for to make sure that you
10 have a disability that is covered
11 by the ADA, and that you have
12 asked for the right kind of help.
13 If you do not get help or if you
14 don't think you got the kind of
15 help you need, ask for a BPT 1074
16 Grievance Form. You can also get
17 help to fill it out."

18 PRESIDING COMMISSIONER BIGGERS: All
19 right. Do you understand what that means Mr.
20 Plaza?

21 INMATE PLAZA: Yes, I do.

22 PRESIDING COMMISSIONER BIGGERS: And what
23 does it mean in your own words please.

24 INMATE PLAZA: In my own words I believe
25 it's saying if I have any disability or need
26 help during this hearing I have the right to
27 have those provided for me.

1 PRESIDING COMMISSIONER BIGGERS:

2 (Indiscernible) we're talking about things like

3 hearing, eye -- do you wear glasses?

4 INMATE PLAZA: No.

5 PRESIDING COMMISSIONER BIGGERS: Okay.

6 Do you have any hearing impairment?

7 INMATE PLAZA: No, I don't.

8 PRESIDING COMMISSIONER BIGGERS: And you
9 can walk without any problems?

10 INMATE PLAZA: Yes.

11 PRESIDING COMMISSIONER BIGGERS: Okay.

12 Have you ever been included in the Triple CMS or
13 EOP Program?

14 INMATE PLAZA: Never.

15 PRESIDING COMMISSIONER BIGGERS: Okay.

16 So you don't suffer from any disability that
17 would prevent you from participating in today's
18 hearing?

19 INMATE PLAZA: Not at all.

20 PRESIDING COMMISSIONER BIGGERS: Counsel,
21 do you feel that your client's ADA rights have
22 been met? Ms. Rutledge?

23 ATTORNEY RUTLEDGE: Yes, Sir.

24 PRESIDING COMMISSIONER BIGGERS: Thank

25 you. This hearing is being conducted pursuant
26 to Penal Code Section 3041 and 3042 and the
27 rules and regulations of the Board of Prison

1 Terms governing parole consideration hearings
2 for life inmates. The purpose of today's
3 hearing is to consider the number and the nature
4 of the crimes you were committed for, your prior
5 criminal and social history, your behavior and
6 programming since your commitment. We have had
7 the opportunity to review your Central File, and
8 you will be given the opportunity to correct or
9 clarify the record. We will reach a decision
10 today, and find -- and inform you whether or not
11 we find you suitable for parole and the reasons
12 for our decision. If you are found suitable for
13 parole, the length of your confinement will be
14 explained to you. Before we go any further, I
15 want to advise you that we expect you to be
16 fully honest with us today, especially with this
17 being your initial hearing. So in the event
18 that you don't get a date today, this here will
19 form the foundation for all future hearings.

20 INMATE PLAZA: I (indiscernible).

21 PRESIDING COMMISSIONER BIGGERS: Any
22 false statement you make today could have an
23 adverse effect on your ability to get a date at
24 a later time in the event that you don't get a
25 date today. Nothing that happens here today
26 will change the findings of the Court. We are
27 not here to retry your case. We are here to

1 determine if you are suitable for parole. Do
2 you understand that?

3 INMATE PLAZA: I understand.

4 PRESIDING COMMISSIONER BIGGERS: The
5 hearing will be conducted in two phases. I will
6 discuss with you the crime you were committed
7 for, your prior criminal and social history.
8 Deputy Commissioner Mejia will talk to your
9 about parole plans, letters of support and
10 opposition, your counselor's report and your
11 psychological evaluation. Once that is
12 concluded, both Commissioners, the District
13 Attorney, and your attorney will ask you
14 questions. Questions from the District Attorney
15 shall be asked through the Panel and your
16 answers should be directed to the Panel. Before
17 we recess for deliberation, the District
18 Attorney, your attorney, and you will be given
19 the opportunity to make a final statement
20 regarding your suitability, followed by
21 statements -- if we had victims, it would be --
22 (indiscernible) follow with the victims, but
23 since we don't have any we don't worry about
24 that one. ~~California Code of Regulations states~~

25 that regardless of time served a life inmate
26 shall be found unsuitable for and denied parole
27 if in the judgment of the Panel the inmate would

1 pose an unreasonable risk of danger to society
2 if released from prison. You have certain
3 rights. Those rights include the right to a
4 timely notice of this hearing, the right to
5 review your Central File. Did you review your
6 Central File?

7 INMATE PLAZA: Yes.

8 PRESIDING COMMISSIONER BIGGERS: And the
9 right to present relevant documents. Ms.
10 Rutledge, do you believe that your client's
11 rights have been met.

12 ATTORNEY RUTLEDGE: Yes.

13 PRESIDING COMMISSIONER BIGGERS: Okay.
14 Thank you, ma'am. You have an additional right
15 to be heard by an impartial Panel. Do you have
16 any objection to the Panel members?

17 INMATE PLAZA: No, none at all.

18 PRESIDING COMMISSIONER BIGGERS: Okay.
19 All right. I'm going to ask Ms. Rutledge, do
20 you have any objections to the Panel
21 (indiscernible)?

22 ATTORNEY RUTLEDGE: No, Sir.

23 PRESIDING COMMISSIONER BIGGERS: Thank
24 you. You will receive a written copy of our
25 tentative decision today. That decision becomes
26 effective within 120 days. A copy of the
27 decision and a copy of the transcript will be

1 sent to you, and you will have 90 days from that
2 date to appeal if you so desire. Now, I need to
3 let you know that the Board has eliminated its
4 appeals process. If you disagree with anything
5 that happens in today's hearing, you have the
6 right to go directly to the Court with your
7 complaint.

8 INMATE PLAZA: I understand.

9 PRESIDING COMMISSIONER BIGGERS: Okay,
10 thank you. You are not required to admit your
11 offense or discuss your offense. However, this
12 Panel does accept the findings of the Court to
13 be true. Do you understand that?

14 INMATE PLAZA: Yes, I (indiscernible).

15 PRESIDING COMMISSIONER BIGGERS: Okay,
16 thank you. I'm gonna pass a -- over to your
17 attorney and then to the District Attorney what
18 I've have marked as Exhibit One so that we can
19 make sure that we're all using -- on the same
20 set of documents.

21 DEPUTY DISTRICT ATTORNEY MORRISON:

22 District Attorney has all the documents, thank
23 you.

24 ATTORNEY RUTLEDGE: The -- Mr. Plaza, the
25 defense has all (indiscernible).

26 PRESIDING COMMISSIONER BIGGERS: Thank
27 you, ma'am. Thank you, sir. Commissioner

1 Mejia, is there any confidential material in the
2 file?

3 DEPUTY COMMISSIONER MEJIA: No. No
4 confidential information.

5 PRESIDING COMMISSIONER BIGGERS: Okay.

6 Are any additional documents to be submitted?

7 ATTORNEY RUTLEDGE: I (indiscernible) we
8 did submit --

9 PRESIDING COMMISSIONER BIGGERS: And I
10 read those (indiscernible) read the statement
11 into the record, because I want to make sure it
12 he gets into the record. I read, I think it was
13 the last two pages that had to do with matrix
14 and all the other stuff in there -- but I -- and
15 I -- but want to get it on record, so -- to
16 make sure that it is in the transcript.

17 ATTORNEY RUTLEDGE: Do you want me to
18 read it or him to do that?

19 PRESIDING COMMISSIONER BIGGERS: It
20 doesn't matter, which ever you prefer.

21 ATTORNEY RUTLEDGE: This was taken from
22 -- Mr. Plaza had submitted to the Board a
23 memorandum of evidence and law in support of
24 parole suitability and this is directed to the
25 Board.

26 "Introduction, the California Code
27 of Regulations Title XV Division

1 Two hereafter XV Section 2245,
2 states in part, 'The prisoner is
3 responsible for bringing to the
4 attention of the hearing Panel any
5 issues pertaining to his rights
6 under this article or any failure
7 to comply with these rules. A
8 prison may waive any of these
9 rights. Any such waiver shall be
10 documented.' I wish to bring to
11 the attention of this Panel at
12 this time that I do have the right
13 to present this document at this
14 hearing to have it entered into
15 the record. Moreover, the Panel
16 must --"

17 That's moot since the Panel's accepting it. Is
18 that correct?

19 DEPUTY COMMISSIONER MEJIA: Yes, it is.

20 ATTORNEY RUTLEDGE: Okay. In the third
21 paragraph, my client submits this memorandum
22 because he does not wish to intentionally or
23 unintentionally waive any of his rights under
24 the law, and that he wants that all evidence in
25 support of finding suitability be stated for the
26 records and for purposes of appeal if necessary.

27 PRESIDING COMMISSIONER BIGGERS: Before

1 you go any further. Normally, everything that
2 we do, that's why it's on record. So, I just
3 want to make sure that you now understand that
4 we -- our job is to make sure that we do
5 everything under due process and we are aware of
6 everything that happens in Title XV.

7 INMATE PLAZA: That's right.

8 PRESIDING COMMISSIONER BIGGERS: Okay?

9 So, go ahead, ma'am, please.

10 ATTORNEY RUTLEDGE: Moving on to the
11 memorandum incorporates the following -- relies
12 upon the Court rulings.

13 "InRe Rosencrance,
14 (indiscernible); InRe Rosencrance
15 for LA County Superior Court, Case
16 No. AH10298; InRe Caswald,
17 210DJDJR10845; InRe McWillion,
18 U.S. Court of Appeals for the 9th
19 Circuit, Case No. 0055182; InRe
20 Ramirez, 9th Circuit Court of
21 Appeals, Case No. A0092699; InRe
22 Biggs, U. S. Court of Appeals,
23 Case No. VH002016; InRe Deluna,
24 126 Appellate Court, 585; InRe

25 Low, 130 Appellate Court, 1418 --"

26 PRESIDING COMMISSIONER BIGGERS: Excuse
27 me, what was that? What was the -- what's the

12.

1 relation of the Low case in this hearing?

2 ATTORNEY RUTLEDGE: How are we applying
3 the Low case to this hearing? This is being
4 presented by my client; I have not read the Low
5 case.

6 DEPUTY DISTRICT ATTORNEY MORRISON: Well,
7 I have a -- I have a question (indiscernible) if
8 I may. The inmate can present anything he
9 wants, but this sounds like legal arguments.
10 The inmate has an attorney -- he's gonna have an
11 attorney -- he can make whatever arguments he
12 wants if he gonna represent himself then he can
13 make legal arguments. But he doesn't get to
14 make legal arguments and have an attorney.

15 ATTORNEY RUTLEDGE: Yes, he does.

16 There's nothing -- sometimes he can have an
17 attorney --

18 PRESIDING COMMISSIONER BIGGERS: Excuse
19 me. What I'm doing right now is allowing him to
20 read his document into the file. When we start
21 talking about the opposing statements and
22 getting into all the others, then that's when I
23 will put a stop to that. But I want to get this
24 in the file, and I have something to say once
25 you finish.

26 ATTORNEY RUTLEDGE: And I would -- I
27 would remind the Panel that under Title XV the

1 people have no standing to object to anything
2 that the inmate does.

3 PRESIDING COMMISSIONER BIGGERS: Exactly.

4 ATTORNEY RUTLEDGE: Thank you. All
5 right. So -- "InRe Shapudis, 135 Appellate
6 Forth 217 at 227; Irons versus Carey 408 F
7 Third, 1165 9th Circuit." Now Page Two goes to
8 the commitment offense so --

9 PRESIDING COMMISSIONER BIGGERS: You can
10 skip that one. In fact, I think you can skip
11 the last three pages, I just wanted to get those
12 things on the record for you (indiscernible)
13 others because what I wanted to let you know sir
14 is that those cases are a matter of law, and you
15 can use those any times when you appeal if for
16 some reason you don't get a date. But there are
17 a couple that you forgot to mention. One of
18 those is Dannenberg, and we'll talk about that a
19 little later on. I would appreciate -- I think
20 you've done a superb job of putting this package
21 together. My only comment on that is I think
22 sometimes that you don't who -- by going in
23 there and doing certain things, there's a
24 difference between shall, will, and can't.

25 INMATE PLAZA: I understand.

26 PRESIDING COMMISSIONER BIGGERS: Okay.

27 So. All right.

1 ATTORNEY RUTLEDGE: Can I -- there's an
2 -- I still have to lodge a couple of objections
3 whenever the Panels --

4 PRESIDING COMMISSIONER BIGGERS: No
5 problem. So those are the additional documents.
6 Now, you say you have some preliminary
7 objections? What are they now?

8 ATTORNEY RUTLEDGE: Well, our first
9 objection would be -- well, we would ask that
10 the Panel -- under 2236 my client will be
11 discussing everything but the commitment offense
12 with the Panel. We ask that the people not be
13 allowed to refer to him not discussing the case,
14 and that again we're just reiterating that the
15 people don't have standing to object to any of
16 our statements and may not advise the Panel on
17 the law, and that would be all aside from what
18 would be in the package.

19 DEPUTY DISTRICT ATTORNEY MORRISON:
20 (Indiscernible) recommend that (indiscernible)
21 represents the citizen of Los Angeles, it's part
22 of public comment that we're entitled to make on
23 any subject regarding suitability for parole.

24 ATTORNEY RUTLEDGE: You can during your
25 closing. Other than that you have no standing.

26 PRESIDING COMMISSIONER BIGGERS: She's
27 right about that. You do have the right to do

1 that in Closing Statements (indiscernible). He
2 can in fact though ask questions. If your
3 client elects not to answer them that's
4 something entirely different, but he does have
5 the right to ask questions as well.

6 ATTORNEY RUTLEDGE: Of my client,
7 correct. Yes. Okay.

8 PRESIDING COMMISSIONER BIGGERS: Are
9 there any other preliminary objections?

10 ATTORNEY RUTLEDGE: No, Sir.

11 PRESIDING COMMISSIONER BIGGERS: Okay. I
12 assume from what you just told me that the
13 inmate will be speaking to us about everything
14 but the crime?

15 ATTORNEY RUTLEDGE: Yes.

16 PRESIDING COMMISSIONER BIGGERS: Okay.
17 Would you raise your right hand please, Mr.
18 Plaza. Do you solemnly swear or affirm that the
19 testimony you give at this hearing will be the
20 truth and nothing but the truth?

21 INMATE PLAZA: I do.

22 PRESIDING COMMISSIONER BIGGERS: Thank
23 you. I'm gonna read into the record from the
24 Appellate decision the facts of the committing
25 offense.

26 "On May 26, 1990, Mr. Plaza was an
27 active member of the King Cobra

1 juvenile gang. (Indiscernible)

2 Silva, S-I-L-V-A, Mr. Plaza's

3 co-arrestee was also an active
4 member of the King Cobras.

5 Patrick Littlebull,

6 L-I-T-T-L-E-B-U-L-L, the victim,

7 was a member of the Bell Garden

8 (phonetic) --" is that local --

9 INMATE PLAZA: It's always been
10 miss-spelled, but it's supposed to be locos as
11 in crazy.

12 PRESIDING COMMISSIONER BIGGERS: Locos.

13 INMATE PLAZA: Locos.

14 PRESIDING COMMISSIONER BIGGERS: Locos.

15 INMATE PLAZA: Yeah.

16 PRESIDING COMMISSIONER BIGGERS: Okay.

17 --- a rival juvenile gang. Fifty-nine hundred
18 block of Loveless (phonetic) Street was a known
19 hangout of the Bell Garden Locos."

20 INMATE PLAZA: There you go.

21 PRESIDING COMMISSIONER BIGGERS: "On May
22 26, 1990 at around 10:00 p.m.

23 Rosario Quevedo, Q-U-E-V-E-D-O,
24 and her sister, Martha -- and I'll

25 spell the last name --

26 P-A-L-A-C-I-O-S, returned from
27 church with their children and

1 parked their car in front of their
2 apartment at 5940 Loveless Street.
3 Quevedo, Q-U-E-V-E-D-O, noticed
4 some individuals standing and
5 talking to each other on the
6 sidewalk in front of the car.. She
7 also saw a car approaching from
8 the opposite direction with its
9 lights off and stop across the
10 street. Rosario and Palatono --
11 P-A-L-A-C-I-O-S -- then heard
12 gunshots. Quevedo panicked and
13 drove away. When they returned a
14 short time later, they saw the
15 victim lying face down in the
16 street in front of the apartment
17 building. Jesus Zamora,
18 Z-A-M-O-R-A, made a pizza delivery
19 for Dominoes Pizza about 10:00
20 p.m. that evening at 5918 Loveless
21 Street. After delivering the
22 pizza he pulled into the driveway
23 at 5918 Loveless Street to write
24 in his delivery book. As he was
25 writing, he heard the sound of
26 gunfire and the sound of a car
27 coming rapidly in his direction.

1 He saw a car traveling on Loveless
2 Street without the headlights on.
3 The car passed Zamora and turned
4 the car, straddling the curve.
5 The lights of the car then came
6 on, and Zamora saw the number 33
7 on the license plate. He also
8 noted that the car was a gray
9 Caprice. He later related his
10 observations to Bell Garden Police
11 Officer Reuben Musquiz,
12 M-U-S-Q-U-I-Z. Officer Musquiz
13 then broadcast a description of
14 the gray Caprice over the police
15 radio. Around 10:50 p.m., Bell
16 Police Officer Baley Hooper,
17 H-O-B-E-R, observed a silver
18 Caprice with 33 on it as the last
19 two numbers on the license plate."

20 And then I'm going to skip down and say -- well,
21 let me read this in too.

22 "-- proceeded westbound on
23 Florence Avenue near the 710
24 Freeway bridge. He radioed for
25 assistance and followed the car
26 into a driveway. Plaza, who was
27 driving, and passenger Danny Silva

1 exit the vehicle. They were
2 detained and subsequently
3 arrested. Brown paper bags were
4 placed on the hands of Plaza and
5 Silva so they -- that they -- be
6 tested for gunshot residue.
7 Analysis residue from a pellet in
8 Silva's hand indicate that Plaza
9 and Silva had either shot a gun,
10 handled a gun, or had been within
11 with two (indiscernible) feet of a
12 gun as it was fired."

13 Okay. That's enough for the record. And since
14 you're not gonna be talking about the crime
15 itself -- and counsel if I touch on an area that
16 you want to object to, that's fine, I need to
17 ask a couple of things though. At one time you
18 denied your involvement.

19 INMATE PLAZA: Yes.

20 PRESIDING COMMISSIONER BIGGERS: Okay.

21 When did you change that?

22 INMATE PLAZA: I'd have to say about an
23 hour into the interrogation.

24 PRESIDING COMMISSIONER BIGGERS: An hour
25 into the interrogation?

26 INMATE PLAZA: Yes.

27 PRESIDING COMMISSIONER BIGGERS: Well, I

1 was looking at the Appellate Decision and it
2 indicated -- I thought it looked like it was a
3 little bit longer than that.

4 ATTORNEY RUTLEDGE: He maintains he was
5 the driver of the vehicle, and they never --
6 there were two people. Both people found in the
7 car had gunshot residue. There was a third
8 person that was never tried.

9 PRESIDING COMMISSIONER BIGGERS: Never
10 tried, but yeah there were two. The two that
11 had the residue was Mr. Plaza and Mr. Silva; is
12 that correct?

13 INMATE PLAZA: That's correct.

14 PRESIDING COMMISSIONER BIGGERS: Okay.

15 Can you tell me how you got the residue on your
16 hands?

17 INMATE PLAZA: Yes, I handled the gun
18 after it was fired plus I was in the vicinity of
19 the shots being fired.

20 PRESIDING COMMISSIONER BIGGERS: Within
21 two to four feet is what you're saying?

22 INMATE PLAZA: Yes, Sir.

23 ATTORNEY RUTLEDGE: Okay, I think we're
24 getting into the commitment offense --

25 PRESIDING COMMISSIONER BIGGERS: Okay.

26 At one time you talked about the (indiscernible)
27 you requested it be turned to a manslaughter

1 (indiscernible), right?

2 INMATE PLAZA: My lawyer did, yes.

3 PRESIDING COMMISSIONER BIGGERS: Yes.

4 And that was shot down by the Appellate
5 Decision. Are you still a member of that King
6 Cobra gang?

7 INMATE PLAZA: I was never technically a
8 member, but I was an associate. I hung around
9 with gang members, to be totally honest. I hung
10 around with several different gang members.

11 People that I hung around with were from
12 different gangs.

13 ATTORNEY RUTLEDGE: (Indiscernible).

14 INMATE PLAZA: Oh, being born and raised
15 in East LA there's gangs all around.

16 PRESIDING COMMISSIONER BIGGERS: Yeah,
17 there are -- some gangs are not as violent as
18 otters.* There are some gangs that are just
19 locals that hang out, too.

20 INMATE PLAZA: Not that I know of.

21 PRESIDING COMMISSIONER BIGGERS: Okay.

22 Well, I'm familiar with LA. Not all of them are
23 Bloods, Crips, or whatever names that they have.

24 You indicated that you have spent a lot of time
25 hanging around those people. Were you aware
26 that -- well, that's getting back into the
27 crime. Were you aware that -- the night in

1 question, were you in with some of those known
2 gang members?

3 INMATE PLAZA: Yes.

4 PRESIDING COMMISSIONER BIGGERS: Did you
5 have any idea what was going to take place?

6 ATTORNEY RUTLEDGE: We would -- that
7 would -- sorry, I have to object to --

8 PRESIDING COMMISSIONER BIGGERS: All
9 right.

10 ATTORNEY RUTLEDGE: But we would accept
11 the --

12 PRESIDING COMMISSIONER BIGGERS: Findings
13 of the

14 ATTORNEY RUTLEDGE: -- Appellate --

15 PRESIDING COMMISSIONER BIGGERS:
16 Appellate Decision. Okay.

17 ATTORNEY RUTLEDGE: Yes.

18 PRESIDING COMMISSIONER BIGGERS: All
19 right. Then I will go and just look and see
20 what else I think is -- talking about your
21 priors.

22 DEPUTY DISTRICT ATTORNEY MORRISON:

23 Excuse me, Commissioner. I'm sorry, I may have
24 missed it with all of this discussion. But did
25 the Chair read the official version of the crime
26 into the --

27 PRESIDING COMMISSIONER BIGGERS: I read

1 it from the Appellate Decision. Yes, it is.

2 DEPUTY DISTRICT ATTORNEY MORRISON:

3 Because the Appellate Decision is pretty
4 lengthy.

5 PRESIDING COMMISSIONER BIGGERS: Yeah,
6 and I read that in --

7 DEPUTY DISTRICT ATTORNEY MORRISON:

8 That's right. Okay.

9 ATTORNEY RUTLEDGE: It's probably why you
10 fell asleep during that part.

11 PRESIDING COMMISSIONER BIGGERS: All
12 right -- we're not going to have that now.

13 ATTORNEY RUTLEDGE: Just teasing.

14 PRESIDING COMMISSIONER BIGGERS: I know.
15 We're going to keep everything on the up and up
16 here. Okay. And did you have a juvenile
17 history, because when I went through this I
18 couldn't find anything. It says not available
19 to Probation Department as far as five years
20 after that. Did you have any juvenile history?

21 INMATE PLAZA: (Indiscernible).

22 PRESIDING COMMISSIONER BIGGERS: And the
23 only adult history that you had was -- you were
24 given 24 months probation for some vandalism

25 INMATE PLAZA: Yes.

26 PRESIDING COMMISSIONER BIGGERS: What was
27 that about?

1 INMATE PLAZA: I was arrested for
2 vandalizing a store -- store property.

3 PRESIDING COMMISSIONER BIGGERS: Why did
4 you do that?

5 INMATE PLAZA: To be honest with you, I
6 was walking down the street, I was intoxicated,
7 I seen the can sitting on the floor, I picked it
8 up, what made we think I wanted to know what
9 color it was I really am not sure today while I
10 did that, but I did spray a one-inch diameter
11 dot on the wall to see what color the can was
12 and that's what I was arrested for -- a one-inch
13 diameter dot on the wall.

14 PRESIDING COMMISSIONER BIGGERS: And they
15 gave you two-years probation for that?

16 INMATE PLAZA: Yes.

17 ATTORNEY RUTLEDGE: It's usually three
18 years under the Penal Code.

19 PRESIDING COMMISSIONER BIGGERS: Yeah,
20 but that -- there had to be some extenuating
21 circumstances as to priors --

22 DEPUTY DISTRICT ATTORNEY MORRISON:

23 Misdemeanor probation in LA County summary
24 probation is frequently two years. Sometimes
25 for a (indiscernible) it's only one year.

26 ATTORNEY RUTLEDGE: But under the Penal
27 Code you don't have to justify three years. You

1 just give three years.

2 PRESIDING COMMISSIONER BIGGERS: Okay,
3 well, my question to you -- was there anything
4 else that led them to give you only two years?

5 INMATE PLAZA: I wouldn't know.

6 PRESIDING COMMISSIONER BIGGERS: Okay.
7 Let's talk a little bit about your drug -- do
8 you have -- do you have a drug history?

9 INMATE PLAZA: Yes, I do.

10 PRESIDING COMMISSIONER BIGGERS: Okay.

11 And what was your drug of choice?

12 INMATE PLAZA: Cocaine.

13 PRESIDING COMMISSIONER BIGGERS: Cocaine.
14 And it says that you began snorting cocaine
15 three times a week at the age of 16 --

16 INMATE PLAZA: Yes.

17 PRESIDING COMMISSIONER BIGGERS: -- and
18 you continued use of this of -- until age 18,
19 and you stopped at age 20.

20 INMATE PLAZA: Actually that's incorrect.
21 I never actually stopped. I just decreased for
22 a minute, and then I just elevated up until the
23 time I was arrested.

24 PRESIDING COMMISSIONER BIGGERS: Were you
25 -- the night you were arrested were you involved
26 in alcohol or cocaine or anything?

27 INMATE PLAZA: Both. Alcohol and

1 cocaine.

2 PRESIDING COMMISSIONER BIGGERS: When did
3 you start using alcohol?

4 INMATE PLAZA: I'd say age 15.

5 PRESIDING COMMISSIONER BIGGERS: You were
6 still living at home, were you not?

7 INMATE PLAZA: Yes, I was.

8 PRESIDING COMMISSIONER BIGGERS: Were
9 your parents aware that you were using cocaine
10 and getting involved in drinking?

11 INMATE PLAZA: No, not at all?

12 PRESIDING COMMISSIONER BIGGERS: How
13 could you hide that?

14 INMATE PLAZA: Well, my father'd been
15 gone since I was about four years old so he's
16 not in the picture. My mother, due to trying to
17 support me and my other siblings -- she worked
18 -- usually she had -- numerous times she usually
19 had two jobs at a time. She's work day and
20 night, so by the time she'd get home I'd already
21 be home in bed.

22 PRESIDING COMMISSIONER BIGGERS: Okay.

23 Did you -- I'll get in your social here
24 (indiscernible) in a few minutes. But I wanted
25 to find out were you -- let me go back. You
26 were talking about the cocaine usage. You
27 started using it at an early age right?

1 INMATE PLAZA: Yes.

2 PRESIDING COMMISSIONER BIGGERS: How did
3 you support yourself in getting that?

4 INMATE PLAZA: I had a job. I used to
5 work after school through the Cedar Program.

6 PRESIDING COMMISSIONER BIGGERS: Cocaine
7 is a fairly expensive drug, isn't it?

8 INMATE PLAZA: Yes, it is.

9 PRESIDING COMMISSIONER BIGGERS: Okay.

10 Were you buying it on the street?

11 INMATE PLAZA: Yes, I was.

12 PRESIDING COMMISSIONER BIGGERS: Costing
13 you a pretty penny to do that, wasn't it?

14 INMATE PLAZA: Yeah, pretty much all my
15 money.

16 PRESIDING COMMISSIONER BIGGERS: Okay,
17 and you still say that your parents did not know
18 that you were doing this?

19 INMATE PLAZA: No, they didn't.

20 PRESIDING COMMISSIONER BIGGERS: How
21 about alcohol? What was your drink of alcohol
22 that you liked?

23 INMATE PLAZA: Mainly my drink was
24 Miller.

25 PRESIDING COMMISSIONER BIGGERS: Miller?

26 INMATE PLAZA: Yes.

27 PRESIDING COMMISSIONER BIGGERS: And you

1 would take that in conjunction with?

2 INMATE PLAZA: Well, the alcohol started
3 off as a, you know, what they call a gateway
4 drug. It was the beginning of alcohol which led
5 me to the cocaine and that was pretty much the
6 two main -- my two main choices of alcohol and
7 drug of choice was cocaine.

8 PRESIDING COMMISSIONER BIGGERS: Okay.

9 Under Social Factors, you were born on February
10 the 7, 1965 to Caroline and Jessie (phonetic)
11 Plaza.

12 INMATE PLAZA: I believe there's an
13 addendum behind that -- there's a --

14 PRESIDING COMMISSIONER BIGGERS: Yeah,
15 that said he was born on 3/7/65.

16 INMATE PLAZA: That's correct, yes.

17 PRESIDING COMMISSIONER BIGGERS: Then you
18 got -- the marriage took place on 5/12/84.
19 That's your marriage, right?

20 INMATE PLAZA: Yes.

21 PRESIDING COMMISSIONER BIGGERS: Getting
22 back to your -- you've got four brothers -- four
23 sisters and a brother?

24 INMATE PLAZA: Yes.

25 PRESIDING COMMISSIONER BIGGERS: Okay.

26 Are they still -- are all of them still living?

27 INMATE PLAZA: Yes, they are.

1 PRESIDING COMMISSIONER BIGGERS: Is any
2 of them incarcerated?

3 INMATE PLAZA: No. And also if I might
4 add, two of -- the two youngest sisters are
5 actually half-sisters. They're from my dad's
6 second marriage.

7 PRESIDING COMMISSIONER BIGGERS: Okay.

8 And your wife's name is --

9 INMATE PLAZA: Guadalupe.

10 PRESIDING COMMISSIONER BIGGERS:

11 Guadalupe Falcon (phonetic)?

12 INMATE PLAZA: Yes.

13 PRESIDING COMMISSIONER BIGGERS: And you
14 married on 5/7/84, and you have three children.

15 INMATE PLAZA: That should be 5/12.

16 PRESIDING COMMISSIONER BIGGERS: You have
17 12 children?

18 INMATE PLAZA: No, no, I'm saying the
19 date. It should be 5/12; you said 5/7.

20 PRESIDING COMMISSIONER BIGGERS: Five
21 seven, and it should be 5/12.

22 INMATE PLAZA: It should be 5/12/84.

23 PRESIDING COMMISSIONER BIGGERS: Okay.

24 We'll make sure that that gets in to your
25 official record regardless of what happens here.

26 INMATE PLAZA: What was the question --

27 I'm sorry --

1 PRESIDING COMMISSIONER BIGGERS: Do you
2 have three kids? Three kids?

3 INMATE PLAZA: Yes, three children.

4 PRESIDING COMMISSIONER BIGGERS: And, in
5 going through your file I saw that there was a
6 letter from your wife and I'm sure that
7 Commissioner Mejia will get in to. Any problems
8 with the marriage?

9 INMATE PLAZA: I'd be lying if I said no.
10 Sure, we have problems. But I mean nothing that
11 we haven't gotten through.

12 PRESIDING COMMISSIONER BIGGERS: Well,
13 I'm talking about because of incarceration
14 (indiscernible).

15 INMATE PLAZA: Oh, yeah, well sure, you
16 know. It's been hard on her being the single
17 mother herself now. It was hard on me not being
18 there able to support her. When I first left, I
19 was the main source of, you know, support for
20 the house so when I first go incarcerated she
21 pretty much had to take everything on and do
22 everything on her own, you know, and she kind
23 of, you know, she felt abandoned, you know, and
24 she had every right to feel that way because she
25 had to just take over the whole household.

26 PRESIDING COMMISSIONER BIGGERS: Did you
27 think about that when you were associating with

1 these known gang members? That that possibility
2 -- that that could happen?

3 INMATE PLAZA: At the time, no, because
4 my -- my thought -- my thought process wasn't on
5 responsibility. To me responsibility was, I had
6 a job, I paid the bills, I put food on the
7 table, there was a roof over their heads, they
8 had clothes on their backs. I thought that was
9 responsibility. I didn't realize that it was a
10 lot more to responsibility than that.

11 PRESIDING COMMISSIONER BIGGERS: But you
12 were still -- you still had your drug habit and
13 everything else --

14 INMATE PLAZA: And work. Yeah, I, you
15 know, I functioned, you know, to the -- to
16 everyone else I seemed to function in a normal,
17 you know, capacity, but of course it was, you
18 know, things behind the scenes that nobody knew
19 about.

20 PRESIDING COMMISSIONER BIGGERS: Okay.
21 Commissioner, do you have any questions on this
22 subject?

23 DEPUTY COMMISSIONER MEJIA: Yeah, maybe
24 about the remorse (indiscernible).

25 PRESIDING COMMISSIONER BIGGERS: Go
26 ahead.

27 DEPUTY COMMISSIONER MEJIA: How do you

1 feel about the man who was killed?

2 INMATE PLAZA: I'm -- in the case of the
3 victim, I take full responsibility for the taking
4 of his life. I can understand remorse. I've
5 dealt with, you know, people dying around me in
6 the past. It's not something that I'm new to.
7 I understand that it not only affected him but
8 it affected his family. It affected friends of
9 his, society. I understand that technically we
10 all -- we all have times in our lives when we
11 wish we could turn back the clock but that's not
12 possible. But I do take full responsibility for
13 my actions.

14 DEPUTY COMMISSIONER MEJIA: How do you
15 feel about the death of the victim; that's what
16 I asked you.

17 INMATE PLAZA: The death of the victim?

18 DEPUTY COMMISSIONER MEJIA: Yeah, the
19 human being that was killed. How do you feel
20 about him being shot and being killed? I know
21 all the peripheral that you said -- I
22 (indiscernible) I want (indiscernible) how do
23 you feel about him?

24 INMATE PLAZA: I'm very remorseful for
25 the victim, for taking his life. He -- I'm very
26 sorry that it happened. It was something that
27 should not have happened. He didn't deserve

1 that, and I just can't -- I mean, there are no
2 words that'll make it better or make it go away.

3 DEPUTY COMMISSIONER MEJIA:

4 (Indiscernible) that's it. I really don't have
5 any questions.

6 PRESIDING COMMISSIONER BIGGERS: Okay.

7 Then I'll ask you to go into the Post Conviction
8 Factors, please.

9 DEPUTY COMMISSIONER MEJIA: Okay. This
10 is your initial parole consideration hearing Mr.
11 Plaza, and your custody history is that you were
12 initially accepted to the Wasco State Prison RC
13 in 1991. You were transferred to California
14 State Prison Folsom new facility in 1991,
15 December. You were at Wasco in October, then
16 December in 1991 you went to the Old Folsom
17 (indiscernible). Then 2/21/1992, you went to
18 CSP Calipatria, North and East. February of
19 1994 you went to Lancaster, then 12/16/1997
20 Avenal State Prison. And you went
21 (indiscernible) in 1998 of March, CTF. You had
22 a brief period of time in CMF for medical issues

23 --

24 INMATE PLAZA: Correct.

25 DEPUTY COMMISSIONER MEJIA: And
26 (indiscernible) you have several jobs, and the
27 most recent job is the (indiscernible) Porter?

1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: And you have
3 an associate (indiscernible). During your
4 incarceration you went to education
5 (indiscernible) electronics -- vocational
6 Electronics, Air Conditioning Réfrigeration, Dry
7 Cleaning, Plumbing. You were a Porter and also
8 a Teacher's Aide, Infirmary Dental Assistant.
9 And, you have a high school diploma that 1983.
10 You have a 12.0 TABE score. (Indiscernible) you
11 have completed 32 units out of the Coastline
12 Community College?

13 INMATE PLAZA: Yes.

14 DEPUTY COMMISSIONER MEJIA: And, you -- I
15 see that you have really attempted to get some
16 trades -- completion of vocational trades. You
17 have completed, I think, 19 certification units
18 when it comes to Air Conditioning and
19 Réfrigeration?

20 INMATE PLAZA: I've completed the whole
21 course.

22 DEPUTY COMMISSIONER MEJIA: You completed
23 that whole course?

24 INMATE PLAZA: Yes.

25 DEPUTY COMMISSIONER MEJIA: That's a
26 problem. I couldn't find a completion. I saw
27 the Certificate of Completion for the -- each

1 unit that's a component to the Refrigeration.
2 So you do have it there?

3 INMATE PLAZA: I believe --

4 DEPUTY COMMISSIONER MEJIA: That would be
5 good for the record, because I -- I saw the
6 certifications units been completed
7 (indiscernible) and how about the Data
8 Processing? I saw that you have completed 22
9 such units also?

10 INMATE PLAZA: Yeah, that was not a total
11 completion --

12 DEPUTY COMMISSIONER MEJIA: So,
13 Vocational Air Conditioning and Refrigeration --
14 you completed this?

15 INMATE PLAZA: Yes..

16 DEPUTY COMMISSIONER MEJIA: Okay. That
17 is the documentation.

18 ATTORNEY RUTLEDGE: (Indiscernible).

19 DEPUTY COMMISSIONER MEJIA: You know,
20 well you said that you completed two trades but
21 I can't find them in the file.

22 INMATE PLAZA: Yes, I understand the last
23 -- '95. On one of my doc hearings -- I think
24 it's right here (indiscernible). At one of my
25 doc hearings, the Commissioner went through my
26 paperwork and verified finding the --

27 DEPUTY COMMISSIONER MEJIA: Do you have a

EXHIBIT C
Part 2 of 2

1 copy of that --

2 INMATE PLAZA: -- chrono and the
3 certificate, but it is no longer in the file.
4 No, I do not have a copy. It's no longer in the
5 file, but the Commissioner did see it at one
6 point in time.

7 DEPUTY COMMISSIONER MEJIA: I saw that,
8 yeah. The doc -- was that Patterson --
9 Commissioner Patterson?

10 ATTORNEY RUTLEDGE: It looks -- Robert
11 Patterson, yeah. It looks to be his signature.

12 DEPUTY DISTRICT ATTORNEY MORRISON: This
13 (indiscernible) is that a progress hearing or
14 something?

15 PRESIDING COMMISSIONER BIGGERS: No --
16 Documentation Hearing. Before they go through
17 initial they give them (indiscernible).

18 DEPUTY COMMISSIONER MEJIA: I don't see
19 any in here. I've checked. No, I know you
20 counted -- I counted 19 units. I'm just
21 surprised that you have all these documents; you
22 don't have the -- I'm not saying that you're not
23 telling the truth, but you're so organized about
24 everything else. But the most important is what
25 you have completed. All the cert units are
26 there -- are there, and I know what you learned,
27 but the completion certificate is the most

1 important because that will count as a --

2 INMATE PLAZA: I understand.

3 DEPUTY COMMISSIONER MEJIA: -- check
4 completed. And, I cannot depend on what the
5 Deputy Commissioner saw. Maybe he had the
6 mistake of easing certification of it or
7 completion of it. I look at your file, and it's
8 like I said, you've got everything else but I
9 can't see the completion. Even on the other,
10 you know your education progress reports.

11 Nothing says (indiscernible) that you completed,
12 but I'm giving you credit for 19 certification
13 units of Air Conditioning and Refrigeration.

14 You also took some vocational Dry Cleaning,
15 which you haven't completed --

16 INMATE PLAZA: It's also a completion.

17 DEPUTY COMMISSIONER MEJIA: Oh, yeah?

18 What year did you complete that?

19 INMATE PLAZA: I believe it's -- it's on
20 that same page or the one before.

21 DEPUTY COMMISSIONER MEJIA: I guess, I
22 think you should just bring me the completion
23 chrono.

24 ~~INMATE PLAZA: I don't have them~~

25 ATTORNEY RUTLEDGE: Four ten '95 is what
26 he has noted here, 4/10/95.

27 INMATE PLAZA: The last time I went

1 through the Board that -- when Patterson went
2 through the doc hearing -- when I went through
3 the doc hearing with Patterson -- '95. I had
4 the paperwork with me. When I hit Avenal I lost
5 half of my property and since then I have not
6 had --

7 DEPUTY COMMISSIONER MEJIA:

8 (Indiscernible). contact the vocational --
9 education where you took it -- the prison where
10 you took it, and ask for a copy of the
11 completion chrono or something to prove that you
12 have completed it. That's something you can do.

13 ATTORNEY RUTLEDGE: It says the
14 Refrigeration would have been 10/1/91, so that
15 was --

16 PRESIDING COMMISSIONER BIGGERS: Excuse
17 me, Commissioner Mejia. When you went through
18 your C-file, did you not notice that those
19 things were not there?

20 INMATE PLAZA: I did, but when I had seen
21 that paperwork from the Chairman the --
22 Commissioner, from the doc hearing, I thought it
23 was going to be enough since he seen it and
24 noted it on his record.

25 PRESIDING COMMISSIONER BIGGERS: Yeah,
26 but (indiscernible) entirely different Panel we
27 have to go by the documentation --

1 INMATE PLAZA: I understand.

2 PRESIDING COMMISSIONER BIGGERS: So,

3 whenever you review whatever make sure that you
4 have those papers.

5 DEPUTY COMMISSIONER MEJIA: Did you
6 complete your Vocational Plumbing?

7 INMATE PLAZA: No, I was never in
8 plumbing. I don't know where plumbing came
9 from.

10 DEPUTY COMMISSIONER MEJIA: Well I have
11 your diploma that -- Mr. Plaza has been unable
12 to complete any certification units in
13 vocational plumbing due to his being house in
14 Level IV. Student left in the plumbing class
15 long enough to be fully evaluated.

16 PRESIDING COMMISSIONER BIGGERS: What
17 prison was that in?

18 DEPUTY COMMISSIONER MEJIA: ASP Avenal --
19 Avenal State Prison.

20 INMATE PLAZA: I was in Wasco for, I
21 think, three months and two weeks. But I was
22 never in plumbing that I can remember. Soon as
23 I got there they came out with the new law of
24 the Close Custody not being, you know, not
25 being able to be in that facility they
26 transferred me over here.

27 DEPUTY COMMISSIONER MEJIA: Well, we'll

1 just leave it that you're claiming that you have
2 completed Air Conditioning and Refrigeration; is
3 that correct?

4 INMATE PLAZA: Dry Cleaning, Air
5 Conditioning and Refrigeration.

6 DEPUTY COMMISSIONER MEJIA: Dry Cleaning
7 you have completed?

8 INMATE PLAZA: Yes.

9 DEPUTY COMMISSIONER MEJIA: What year was
10 the dry cleaning, again?

11 INMATE PLAZA: I believe it was '94 --

12 ATTORNEY RUTLEDGE: The Dry cleaning was
13 -- I have completed 4/10/95, the Dry Cleaning
14 and then the Air Conditioning, 10/1/99. What
15 was the other one?

16 DEPUTY COMMISSIONER MEJIA: Most recent
17 (indiscernible) Home Inspection.

18 INMATE PLAZA: I got that.

19 DEPUTY COMMISSIONER MEJIA: Okay. So,
20 you're saying that you completed Air
21 Conditioning and Vocational Dry Cleaning?

22 INMATE PLAZA: Yes.

23 DEPUTY COMMISSIONER MEJIA: And Air
24 Conditioning Refrigeration? Anything else?

25 INMATE PLAZA: The Home Inspection, and
26 the --

27 DEPUTY COMMISSIONER MEJIA: I'll go

1 through that. But the actual vocational trade
2 (indiscernible) because I know you took Data
3 Processing, you did --

4 INMATE PLAZA: No, no --

5 DEPUTY COMMISSIONER MEJIA: -- assembly
6 --

7 INMATE PLAZA: Yeah, I was not in the
8 class --

9 DEPUTY COMMISSIONER MEJIA: Well, these
10 are the two major ones that you're saying that
11 you completed. Dry Cleaning, and Air
12 Conditioning and Refrigeration.

13 INMATE PLAZA: Yes.

14 DEPUTY COMMISSIONER MEJIA: And then you
15 did have -- completed the International
16 (indiscernible) institute course, 8/23/1994.

17 INMATE PLAZA: That's Dry Cleaning.

18 DEPUTY COMMISSIONER MEJIA: That's
19 connected to Dry Cleaning?

20 INMATE PLAZA: Yes.

21 DEPUTY COMMISSIONER MEJIA: Then you have
22 -- you been in AA since 1994?

23 INMATE PLAZA: Ninety-three, '93, yeah
24 somewhere around there. I don't remember the
25 exact date.

26 DEPUTY COMMISSIONER MEJIA: But the
27 chrono I saw was for '94.

1 INMATE PLAZA: Ninety-four.

2 DEPUTY COMMISSIONER MEJIA: Okay, that's

3 fine. And you're still going --

4 INMATE PLAZA: Yes.

5 DEPUTY COMMISSIONER MEJIA: -- according
6 to these last chronos, 4/1/2006. Going to the
7 (indiscernible) Labauche Literacy Program, peer
8 education program, Christian Fellowship, courses
9 in Anger Management 2005, CLN courses, you've
10 been (indiscernible) also Christian basic
11 classes, you been involved in Teddy Bear
12 (indiscernible) Teddy Bear Drive, Softball -- I
13 see all this stuff in there. But I'm concerned
14 about the major ones; AA, NA, Anger Management,
15 (indiscernible) Impact is good. Impact
16 programming -- you did some peer education
17 program (indiscernible) sexually transmitted
18 diseases, Hepatitis. You did some Bible --
19 seven-week Bible Study series Christian Living.
20 Let's see. Anything else you want to add?

21 ATTORNEY RUTLEDGE: Can I ask you,
22 Commissioner, would you -- do you have the
23 completion of AA since '94 or we don't?

24 DEPUTY COMMISSIONER MEJIA: I have the
25 chronos since 1994. What's the first one --

26 ATTORNEY RUTLEDGE: Okay, I just wanted
27 to make sure we didn't need to verify --

1 DEPUTY COMMISSIONER MEJIA: Oh, no, it's
2 good --

3 ATTORNEY RUTLEDGE: Thank you.

4 DEPUTY COMMISSIONER MEJIA: -- 1994,
5 group therapy in 1994 is the first documentation
6 of him going to AA. He did make (indiscernible)
7 time positively. He did some softball. You
8 been going to softball, playing games and you're
9 part of the team and like I said -- anything
10 else? Those are the major ones that I have.
11 I've (indiscernible) that you have completed.
12 No 115s and no 128(a)s. According to the 812
13 you do have affiliation or membership in
14 Southside King Cobra. I have no other -- other
15 than the 812 that the counselor completes every
16 year when you go to classification I have no
17 other information about him being involved in
18 any gang *(indiscernible) in prison. And, now
19 we're going to go through your psych reports.
20 Of course, there's two. Since this is your
21 initial, we're gonna do -- I'm gonna read both
22 the -- this was done -- the first one was done
23 in July 21st, 1994, in Lancaster, by Dr. Isaac
24 (indiscernible), and the diagnosis ~~Diagnostic~~
25 Impression at that time is Axis I, Poly
26 Substance Abuse; Axis II, Combat Disorder, group
27 kind; Axis III, to be evaluated by physicians;

1 Axis IV, Psycho Social Stressors, from mile to
2 moderate incarceration; Axis V, Global
3 Assessment of Functioning of 70, sentence and
4 incarceration; and according to the doctor that
5 their recommendation is -- he said at that
6 present time,

7 "In 1994 it was difficult to
8 assess the psychopathology that's
9 related to the crime. The inmate
10 does not reveal many details due
11 to the appeal process. However it
12 seems that he was involved in
13 behavior (indiscernible) by lack
14 of regard for others; drugs and
15 alcohol abuse. The inmate has
16 improved while incarcerated. He
17 made a statement 'I grew up. I'm
18 mature.' Quote unquote. It's
19 also an observation of his
20 examiner. The inmate was able to
21 express himself in a manner that
22 indicated (indiscernible)
23 increased maturity. Living in a
24 controlled setting it is too early
25 to make any assessment. However
26 his record indicates that he is
27 able to follow rules and

1 regulations and is also doing
2 above average programming.

3 (Indiscernible) recommended that
4 --"

5 [Thereupon the tape was turned over.]

6 DEPUTY COMMISSIONER MEJIA: --
7 psychological report on Mr. Plaza. "It is
8 recommended for him to continue his work
9 involving trade and other meaningful
10 activities." Then we have the most current,
11 which is -- which is dated April 15th, 2006, by
12 Dr. Macomber, M-A-C-O-M-B-E-R, and the
13 Diagnostic Impression is Axis I, Drug and
14 Alcohol Abuse by history; Axis II, no
15 personality disorder; Axis III, no physical
16 disorder; Axis IV, Life Term Incarceration, GAF
17 of 95. This --

18 "He does speak in excellent
19 English as well as Spanish.

20 Affect was appropriate. There was
21 no evidence of anxiety or
22 depression. Eye contact was good.

23 His memory was intact
24 (indiscernible) was intact. His

25 insight and self-awareness were
26 good. Assessment of
27 Dangerousness. In the potential

1 -- the prisoner's potential for
2 dangerous behavior in the
3 institution. Mr. Plaza has
4 remained entirely
5 disciplinary-free. This is
6 commendable."

7 And the Causative Factors,

8 "He said that he has disassociated
9 himself from the activity of
10 Hispanic (indiscernible). No
11 evidence that he had ever been
12 involved in riots, possession of
13 weapons, assaults and other --
14 threats of any kind. At this time
15 in this prison we have been --
16 there has been frequent riots, and
17 it is very difficult for a
18 Hispanic male to disassociate
19 himself from this activity which
20 can spontaneously occur in front
21 of him and if he doesn't get
22 involved he will receive
23 retaliation. In this case
24 remaining disciplinary-free is a
25 very difficult and commendable
26 achievement. But because of his
27 being disciplinary-free

1 (indiscernible) finds him
2 definitely below average in
3 comparison to other inmates.

4 (Indiscernible) considering his
5 dangerous behavior in the
6 community -- potential for
7 dangerous behavior in the
8 community, Mr. Plaza has no prior
9 arrest for violence before the
10 commitment offense. He did
11 receive an arrest as an adult
12 making a (indiscernible) spraying
13 a one-inch diameter dot on the
14 wall. He remains
15 disciplinary-free in the
16 instituting. In order to examine
17 this prisoner's level on parole,
18 the level of (indiscernible) was
19 administered and it's indicated
20 the 12 measures that assess
21 criminal history, substance abuse
22 history, current adjustment, and
23 other factors to determine risk
24 level this measure he obtained
25 a score of 3.6 (indiscernible)
26 frequencies for prison for prison
27 inmates. This means that if 100

1 men were released on parole, he
2 would be (indiscernible) better on
3 parole than 96 of them. This is a
4 very low risk level; as a result
5 he poses no more threat to society
6 than the average citizen in the
7 community, and probably less
8 threat to society at this point in
9 his life. At the time of his
10 offense, drugs and alcohol were a
11 problem. However, at this point
12 in his life it is no longer an
13 issue therefore there are no
14 significant risk factors for this
15 case."

16 Any addition to my presentation, counsel, that I
17 missed -- you want to --

18 ATTORNEY RUTLEDGE: Did you mention how
19 he's helped other -- he's been like a mediator
20 for other gangs?

21 PRESIDING COMMISSIONER BIGGERS: Yeah, he
22 mentioned that.

23 ATTORNEY RUTLEDGE: Okay (indiscernible).
24 That covers everything that we had including
25 what we submitted.

26 PRESIDING COMMISSIONER BIGGERS: Okay,
27 we're going to parole plans. Residence plans;

1 you're living with your brother Hector Plaza.
2 Hector's residence is 353 Carla Drive, Simi
3 Valley, California, 93063, and it's got a phone
4 number here. Employment; Plaza plans on working
5 Italia International, 4175 Dragon Street, Simi
6 Valley California. I saw the letter of -- that
7 documents that. Also your brother's letter.
8 Assessment in re of Plaza's parole plans. "This
9 counselor does not foresee any problems.
10 However, it's recommended that Plaza updates his
11 parole letters prior to this hearing." I have
12 -- this letter's here (indiscernible) Dale Air
13 International from Nick Gillichbauer,
14 G-I-L-L-I-C-H-B- as in Boy A-U-E-R. It's
15 indicated that he's the General Manager of the
16 organization and he's willing to give him
17 employment in the company and he will make \$9.00
18 per hour as an assembler, working in assembly
19 with the basic hours of 7 o'clock to 3:30 p.m.
20 He will have (indiscernible) basic benefits of
21 medical and dental. And there -- some of your
22 support letters now. Jessica Plaza, dated
23 February 20, 2006, a support letter indicating
24 that lots of support from all the family and
25 we need to (indiscernible) his mind and heart
26 set to accomplish all the right things and not
27 wrong things, for taking time to read this

1 letter of support. She (indiscernible) says
2 that she will -- Isabelle Plaza. Your sister
3 also wrote a letter February 5, 2006. It
4 doesn't say that you can -- yeah, it's
5 supporting your release, but -- so Jessie --
6 Jesus Plaza is some brother that you're going to
7 be staying with --

8 INMATE PLAZA: No -- my dad is Jesus.

9 DEPUTY COMMISSIONER MEJIA: Your dad --
10 your dad is Jesus Plaza? There's another
11 letter, February 5, 2006. It says that you're
12 ready to go back to society. There is Hector
13 Plaza, November 12, 2005. He should be granted
14 parole. He said that you should be granted
15 parole and of course you have become a positive
16 role model for everyone. He said that you will
17 always have a home here with his wife and
18 children, and I also plan on supporting him
19 financially with whatever it takes to help you
20 get on your feet.

21 INMATE PLAZA: Correct.

22 DEPUTY COMMISSIONER MEJIA:

23 (Indiscernible) Ministry (indiscernible) these
24 are your aunts and uncles --

25 INMATE PLAZA: Yes.

26 DEPUTY COMMISSIONER MEJIA: Yolanda Plaza
27 and Arto (Phonetic) Plaza. He's a Pastor in a

1 church?

2 INMATE PLAZA: Yes, he is.

3 DEPUTY COMMISSIONER MEJIA: They will
4 provide you counseling, and will be able to
5 provide you mentors and he's also owner of a
6 construction business and would be services --
7 if he needs employment -- if you need employment
8 he will be able to give you employment.

9 INMATE PLAZA: He's also offering me to
10 stay in his home. He gave me -- it's actually
11 in this other packet -- has his phone number,
12 cell number, anything you might need to ask him
13 any further questions.

14 DEPUTY COMMISSIONER MEJIA: Helen Plaza
15 is your mother?

16 INMATE PLAZA: Yes.

17 DEPUTY COMMISSIONER MEJIA: And I have a
18 support letter here, asking that you should be
19 -- asking for your release. She also said that
20 you'll have a house to come home -- when you
21 come home. Rachel Plaza, I think is your
22 sister?

23 INMATE PLAZA: Yes, correct.

24 DEPUTY COMMISSIONER MEJIA:

25 (Indiscernible) you have her total support,
26 either financially -- financial support.
27 Christina Plaza, this is your daughter.

1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: Asking that

3 -- how old is she?

4 INMATE PLAZA: She is 19.

5 DEPUTY COMMISSIONER MEJIA: Oh. You have
6 -- she indicates that you have supported her by
7 teaching (indiscernible) classes. Thinks you
8 should be -- she's going to college. She's
9 looking for work to help (indiscernible) you,
10 any way possible. And we have Guadalupe Plaza,
11 your wife?

12 INMATE PLAZA: Yes.

13 DEPUTY COMMISSIONER MEJIA: Another
14 support letter. She says I will support him in
15 ever way that he needed for him to meet his
16 parole conditions. Isaiah Plaza, your son?

17 INMATE PLAZA: Yes.

18 DEPUTY COMMISSIONER MEJIA: He -- how old
19 is he?

20 INMATE PLAZA: He's ten.

21 DEPUTY COMMISSIONER MEJIA: Ten. And
22 there's another one, Ramona Plaza, your -- your
23 daughter, too?

24 INMATE PLAZA: That's correct.

25 DEPUTY COMMISSIONER MEJIA: Letter of
26 support. Annette Gizmallia (phonetic). That's
27 your sister?

1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: Another
3 letter of support. She says she owns her own
4 and will provide a place for you to live, help
5 you financially and help you enter your programs
6 with counseling to help you deal with everyday
7 life's events for as long as it takes. And
8 Alicia Desente Islanded (phonetic), who is this?
9 Oh, this is -- this looks like it's a different
10 one. Who's Juan Jose (indiscernible)?

11 INMATE PLAZA: Excuse me.

12 ATTORNEY RUTLEDGE: One from Mexico?

13 DEPUTY COMMISSIONER MEJIA: You have -- I
14 couldn't read this. 9805 Jessie Plaza, okay,
15 H12371 that's you. And, for M. Espinoza -- this
16 is a friend?

17 INMATE PLAZA: Yes, it is.

18 DEPUTY COMMISSIONER MEJIA: Okay. It's
19 another letter of support. And, Chaplain
20 (indiscernible) Lindsey -- this is the Chaplain
21 here in the prison --

22 INMATE PLAZA: Yes, it is.

23 DEPUTY COMMISSIONER MEJIA: Okay. Letter
24 of support and he said that you have been an
25 outstanding gentleman since his observation of
26 you since 1998. He was appointed Music Deacon
27 in 2003. You a musician? You play music?

1 INMATE PLAZA: No. No. I just direct
2 the choir.

3 DEPUTY COMMISSIONER MEJIA: Oh. He said
4 that you have -- he has seen phenomenal changes
5 in your life during these years and he's a
6 wonderful role model, conscious of people's
7 needs, feelings and (indiscernible). He's truly
8 an asset to our religious program here at CTF.
9 And he highly recommends consideration of the
10 Board of Prison Terms and this gentleman has --
11 he feels that you will be an outstanding asset
12 in the community. Nabia Anegias (phonetic),
13 cousin?

14 INMATE PLAZA: Say the name again?

15 ATTORNEY RUTLEDGE: Yeah, it's his
16 cousin, Nadia Anegus (phonetic).

17 DEPUTY COMMISSIONER MEJIA: Nadia Anegus,
18 another support letter.

19 ATTORNEY RUTLEDGE: Oh, well, you know
20 what -- it's from the Juan (indiscernible)
21 files. Poor Juan Reevus, (indiscernible) find
22 these letters.

23 DEPUTY COMMISSIONER MEJIA: Okay, Jessie
24 Plaza and that this is from an (indiscernible)
25 from Glenbrook, Philadelphia?

26 INMATE PLAZA: Yes. That's actually --
27 that's my sister --

1 DEPUTY COMMISSIONER MEJIA: Your sister?

2 INMATE PLAZA: Yes. She married -- her
3 name changed to Guerum (phonetic) but --

4 DEPUTY COMMISSIONER MEJIA: She said that
5 she will continue to support you after release
6 until you get back on your feet. She also
7 offers her home.

8 INMATE PLAZA: Yeah.

9 DEPUTY COMMISSIONER MEJIA: Guadalupe
10 Plaza, that's your wife. You said 2000 -- I
11 don't know what year was this one, but I read
12 (indiscernible) I know she's going to support
13 you. January 7th, 2005, Jesus Plaza -- your
14 father. Right?

15 INMATE PLAZA: Yes, that's correct.

16 DEPUTY COMMISSIONER MEJIA: Okay. Ramona
17 Plaza --

18 INMATE PLAZA: My daughter.

19 DEPUTY COMMISSIONER MEJIA: Your
20 daughter. Isaiah Plaza -- I read that.

21 PRESIDING COMMISSIONER BIGGERS: Some of
22 them are duplicates, some are from 2005 and some
23 are 2006.

24 DEPUTY COMMISSIONER MEJIA: Anything else
25 (indiscernible)?

26 ATTORNEY RUTLEDGE: I think you've
27 covered every letter and more and even those

1 that didn't belong to us. So, thank you.

2 DEPUTY COMMISSIONER MEJIA: And let me
3 turn this back to the Commissioner.

4 PRESIDING COMMISSIONER BIGGERS: Okay,
5 thank you. I just have one question there. I
6 see that you want to parole to your brother.
7 Why aren't you paroling back to your wife?

8 INMATE PLAZA: Oh, yes, my wife moved in
9 with her sister two years ago. Her mother'd
10 been fighting cancer. Unfortunately her mother
11 passed away November of last year, and currently
12 she's still living with her sister. But upon my
13 release, hopefully within the next, you know,
14 within three to six months, between the both of
15 us we'll have the money to put a first and last
16 down payment, you know, that you need for your
17 -- our own place so that we can live together.
18 But currently she's with her sister.

19 PRESIDING COMMISSIONER BIGGERS: Did I
20 miss anything -- talking about the, what little
21 we could talk about the crime --

22 ATTORNEY RUTLEDGE: You know, I meant to
23 point out to you -- it's up to your discretion.
24 He did provide a version in the Board Report.

25 PRESIDING COMMISSIONER BIGGERS: Yeah, I
26 saw that.

27 ATTORNEY RUTLEDGE: Other than that,

1 except for Closing Statement, we have nothing
2 else to --

3 PRESIDING COMMISSIONER BIGGERS: To talk
4 about -- okay. At this point then I'm gonna ask
5 the District Attorney if he has any questions
6 for the -- Mr. Plaza.

7 DEPUTY DISTRICT ATTORNEY MORRISON: Okay.

8 Did I hear the inmate say that he accepted
9 responsibility for the crime an hour into the
10 law enforcement interview?

11 INMATE PLAZA: Correct.

12 PRESIDING COMMISSIONER BIGGERS: Please
13 direct your answers to (indiscernible).

14 DEPUTY DISTRICT ATTORNEY MORRISON: Just
15 a moment, please. So at the time of his trial,
16 the inmate accepted full responsibility for the
17 crime.

18 INMATE PLAZA: Correct.

19 DEPUTY DISTRICT ATTORNEY MORRISON: Thank
20 you. I have no further questions. Oh, wait a
21 minute. Does the inmate know what the matrix
22 for this crime is?

23 INMATE PLAZA: I believe it's 27, 28
24 years.

25 DEPUTY DISTRICT ATTORNEY MORRISON: Thank
26 you. Nothing further.

27 PRESIDING COMMISSIONER BIGGERS: Okay,

1 thank you, sir. Ms. Rutledge.

2 ATTORNEY RUTLEDGE: Thank you. In
3 looking through some of your information I came
4 across a letter that's -- I wanted to ask you
5 about this letter. It's addressed to all family
6 members, loved ones, and friends of Patrick
7 Littlebull. You made an attempt to submit an
8 apology letter to his family or to the District
9 Attorney?

10 INMATE PLAZA: I mailed that to the
11 address indicated on the (indiscernible).

12 ATTORNEY RUTLEDGE: All right. And what
13 was -- I didn't see the -- what was the address?

14 INMATE PLAZA: Is it not on the
15 letterhead of the --

16 ATTORNEY RUTLEDGE: Oh, the
17 Correspondence Division in Sacramento.

18 INMATE PLAZA: Yes. Sacramento, yes.

19 ATTORNEY RUTLEDGE: Okay, and that was
20 dated June 15th, 2004. It -- I'll go ahead and
21 leave it if the Board wishes to review it, but I
22 think you wrote it on the prompting of Impact?

23 INMATE PLAZA: Yes, correct.

24 ATTORNEY RUTLEDGE: Anyway, I just wanted
25 to note that this letter -- he had written a
26 letter to the family, and what did you learn in
27 Impact?

1 INMATE PLAZA: Do you want to be
2 specific, or do you want me to tell you
3 everything that I learned in Impact?

4 ATTORNEY RUTLEDGE: Well, what changed
5 your life about Impact?

6 INMATE PLAZA: I'd have to say the thing
7 that was a drastic blow to me more than anything
8 was there was an individual by the name of Angie
9 Torres, her son was killed in a drive-by here in
10 Salinas and I had the opportunity to sit down
11 with her and discuss with her some of the
12 specifics of my crime and in sharing with her --
13 she had not shared with me but I shared with
14 her, and upon finishing my, you know, my talk
15 with her I introduced her -- I am a facilitator
16 of Impact -- I introduced her and I went and sat
17 down with the audience in the pews and then she
18 had her opportunity to get up and give a
19 presentation, and when she gave the presentation
20 the similarities of what happened to her son was
21 just -- it was eerie because they were just so
22 close, and afterwards we had the opportunity to
23 talk and she told me, you know, that -- she
24 said, yeah you don't know what you did when you
25 were talking to me. She says, you know, and you
26 didn't even know my story and the same for me.
27 I didn't know her story, but yet I shared with

1 her, and then upon learning her story it just --
2 it blew me away because I just realized what it
3 must have felt like to be on the other side.
4 Because in Impact that's one of the things that
5 we teach. We teach victim awareness. We teach,
6 you know, so many people are used to being on
7 the side of the crime -- on the side of, you
8 know, being the wrong one, and they never know
9 what it's like to be on the other side. Most
10 guys come out of that program with a totally
11 different vision of crime. A lot of them come
12 out and they say, wow, I never knew that I had
13 that impact on my victims. So it -- it really
14 -- it had -- it gave me a greater view, you
15 know. It wasn't just that focus on one person
16 or one individual. It opened my understanding
17 of how many -- how great an effect it had.

18 ATTORNEY RUTLEDGE: What about the people
19 in this room? Do you think this offense affects
20 us?

21 INMATE PLAZA: Oh, definitely,
22 definitely. I believe it does because -- again,
23 speaking on the ripple effect, not only did it
24 effect him, his family, his friends or his loved
25 ones, but it effected society and I realize that
26 it all trickles down and what happens is taxes,
27 money, time spent, you know, it all, you know,

1 it's a ripple effect that never reaches the
2 banks of the water.

3 ATTORNEY RUTLEDGE: All right. And,
4 there's a statement in the Probation Report
5 that's pretty negative about you. I mean,
6 you're in a car with gang-bangers and someone is
7 shot and killed and left to die on the street.
8 How do you go from that to the person that you
9 are today? What happened?

10 INMATE PLAZA: I would have to say even
11 though I chose that -- to hang around with them
12 type of people, you know, chose to be around
13 that lifestyle, in all honesty I never expected
14 to end up in prison and upon --

15 ATTORNEY RUTLEDGE: (Indiscernible).

16 INMATE PLAZA: -- honestly I didn't. But
17 upon me actually making it to prison due to bad
18 choices, it was just a slap in the face, you
19 know. It was just reality and when it hit me I
20 realized that, you know, everything that I had
21 been doing, you know, reality was what I got,
22 you know, being in prison and it wasn't
23 something that -- it just didn't sit right with
24 me, and I knew that this wasn't me, you know. I
25 didn't -- I didn't want to -- I didn't want to
26 be in prison or be one of them persons that go
27 in and out of prison, so it was a -- it was a,

1 you know, it was a rude awakening.

2 · ATTORNEY RUTLEDGE: No further questions.

3 PRESIDING COMMISSIONER BIGGERS: Okay.

4 Thank you. At this point I'm going to ask Mr.
5 Morrison for his closing.

6 DEPUTY DISTRICT ATTORNEY MORRISON: The
7 District Attorney opposes parole for this
8 outrageous heinous and premeditated, vicious
9 gang attack. The inmate aided and abetted by
10 driving his vehicle over to the location of the
11 murder, parking it without its lights in what
12 the Appellate opinion described as almost lying
13 a wait attack. And Mr. Littlejohn (sic) a rival
14 gang member was shot and killed. He was not the
15 only victim. The Bell Garden's Police Report
16 which had been submitted along with the
17 Sheriff's Homicide Report note that the
18 supplemental report Officer Winfrey,
19 W-I-N-F-R-E-Y, Bell Garden PD was staffed to the
20 home of witness Collins who found a hole in his
21 south kitchen window and an adjacent hole in the
22 wallboard next to the window. The officer.
23 observed a hole, approximately one inch in
24 diameter, in the lower portion of the south
25 kitchen window. Glass fragments were present on
26 the interior window sill. Another little hole
27 was present in the interior vertical portion of

1 the inside of the window frame, and the reason
2 this is significant is because the inmate with
3 his gang mentalities and his crime partner
4 sprayed bullets in a residential neighborhood.
5 One was recovered from victim Littlejohn which
6 was matched to the murder weapon which was found
7 secreted in the inmate's car. The witnesses
8 which described in the reports, noted numerous
9 shots being fired and any one of those bullets
10 could have gone through the house like it did
11 Mr. Collins home and killed another innocent
12 person in their home, minding their own
13 business. This is the kind of gang that's
14 plagued Los Angeles and all communities around
15 the state and country, senseless gang violence.
16 The motive was a retaliatory shooting because
17 the Bell Garden Locos had fired on King Cobra
18 earlier that night. The inmate should be
19 commended; he's programmed well. Not many
20 people come this long without a 115. He is on
21 the way to turn his life around, as evidenced by
22 his programming. However, the inmate still I
23 don't believe has come to grips with the crime
24 because he's still not candid with the Board.

25 ATTORNEY RUTLEDGE: Objection.

26 PRESIDING COMMISSIONER BIGGERS:

27 (Indiscernible) statement. Please continue.

1 DEPUTY DISTRICT ATTORNEY MORRISON: The
2 inmate said he took responsibility into the
3 Sheriff's interview, and this was documented at
4 length in the Appellate Opinion as well as the
5 statements contained in the police report. This
6 is in the Appellate Opinion, Page Four and Five,
7 which has not been read into the record yet.

8 "Deputy Sheriff Woods Danoff, D-A-N-O-F-F,
9 interviewed appellant on May 27th, 1990."

10 ATTORNEY RUTLEDGE: We would object to
11 the reading of the police report, just because
12 it's submitted there's still not adequate
13 foundation for it to be read into the record.

14 DEPUTY DISTRICT ATTORNEY MORRISON: This
15 is the Appellate Opinion summarizing the
16 evidence at trial.

17 ATTORNEY RUTLEDGE: I'm sorry, I thought
18 you said a Sheriff's Report.

19 PRESIDING COMMISSIONER BIGGERS: Go
20 (indiscernible).

21 DEPUTY DISTRICT ATTORNEY MORRISON: Page
22 Four in the Appellate Opinion, Deputy Sheriff
23 Woods Danoff, who is one of the two LA SD
24 homicide investigators in the case who
25 interviewed the inmate.

26 "He interviewed appellant inmate
27 on May 27th, 1990. Appellant at

1 first denied any knowledge of the
2 shooting, maintaining he had been
3 at a party at the time of the
4 shooting. After being informed
5 that his car had been identified
6 as being used in the homicide and
7 that the gun had been recovered
8 from the car, appellant admitted
9 that he drove the car that was
10 used in the shooting -- "

11 DEPUTY COMMISSIONER MEJIA: Excuse me --

12 PRESIDING COMMISSIONER BIGGERS:

13 Continue, Sir.

14 DEPUTY DISTRICT ATTORNEY MORRISON: I'll
15 repeat the last sentence, since it was --
16 "After being informed that his car
17 had been identified as being used
18 in the homicide and that the gun
19 had been recovered from the car,
20 appellant admitted that he drove
21 the car that was used in the
22 shooting and (indiscernible)
23 supplied the weapon and the car.

24 Appellant claimed that the shooter
25 was named someone -- someone named
26 Oso, O-S-O, and that he neither
27 slowed the car down nor stopped

1 the car and never turned off his
2 headlights. He claimed Oso later
3 left the car and that he later
4 picked up Silva and was giving him
5 a ride to Silva's sister's house
6 when they were stopped and
7 arrested."

8 Now, the inmate apparently is saying that's when
9 he accepted responsibility. I asked the inmate
10 specifically if he had accepted responsibility
11 in the testimony at his trial, and that is not
12 correct according to the Appellate report
13 summary of the inmate's testimony. The inmate's
14 testimony, under oath, at trial was a denial.
15 The Appellate Report continues on the same page.

16 "Appellant testified he gave a
17 ride to a man named Oso who was
18 seeking to purchase cocaine. Oso
19 told the appellant that he could
20 not use his own car because it was
21 hot. While looking for the
22 cocaine to sell, the appellant saw
23 seven to ten men running at his
24 car. The appellant accelerated
25 and hear Oso shout punks at the
26 men. Oso then pulled out a
27 revolver and fired. Appellant

1 drove away. Appellant did not
2 know that Oso had a gun until he
3 fired it. His car lights were not
4 turned off, and he slowed down
5 only for the purpose of finding
6 the cocaine dealer. Oso tried to
7 hand appellant the revolver after
8 he fired it, but appellant pushed
9 it away and it fell into the part
10 of the car where the radio was
11 missing. Appellant refused to
12 disclose the identity of Oso
13 saying he would be killed if he
14 did."

15 I submit that that is not accepting
16 responsibility for being the aider and abeter,
17 driving a fellow gang member over to the
18 location, parking with your lights out in what
19 the Appellate Court labeled almost lying in
20 wait, and allowing your crime partner to go up
21 and shoot a rival gang member motive being gang
22 retaliation, and as I had said spraying bullets
23 all around. The defendant's testimony at trial
24 was a rejection of responsibility, a denial of a
25 commission of the file, and is absolutely not
26 what he told the Panel today that he accepted
27 responsibility in the trial. He's basically

1 says, oh, I gave some dude a ride to go buy some
2 coke and then all of a sudden he pulls out a gun
3 and starts shooting somebody. I had no idea.
4 That is not responsibility. The inmate was
5 attempting to be exonerated of the crime. The
6 Appellate Report Opinion goes into great length,
7 and I won't read it all, but on Page Six it
8 describes all the evidence testified by other
9 witnesses supporting of pre-meditated murder.

10 "The appellant's driving slowly
11 with his lights off, thus
12 eliminating attention to his
13 approaching car is strong evidence
14 of prior planning. The approach
15 without lights is factually
16 similar to lying in wait and
17 illustrates a deliberate plan by
18 the occupants of the car to
19 approach to victim unnoticed so
20 that the killing could be
21 accomplished from a position of
22 surprise and advantage. The
23 relationship between appellant and
24 the victim, each belonging to
25 rival gangs between which there
26 was bad blood provided evidence of
27 the appellant's motive for the

1 shooting. The manner of the
2 shooting, one person shooting and
3 another driving so as to
4 facilitate an easy and rapid
5 escape especially when coupled
6 with appellant's slow approach to
7 the scene with his lights off
8 reflects that the killing resulted
9 from a pre-conceived desire."

10 This is about as callous, cold-blooded and
11 calculated murder as you can have. The only
12 thing was the appellant apparently did not pull
13 the trigger. But he did everything short of
14 that. The psych report in 1994, said well he
15 didn't really want to go into the details of it
16 because it was still on appeal. Current psych
17 report just glosses over the apparent lack of
18 insight and says because of his good behavior he
19 is a low risk. I submit that until he
20 demonstrates more credibility with the Panel and
21 more insight into his actual role and
22 participation, he has not taken responsibility
23 for it and therefore his statements of remorse
24 and the psych report are not actually supportive
25 because they really didn't delve into it. The
26 fact that he hadn't been caught in other crimes,
27 had a minimal criminal record is commendable.

1 It's not really an escalating pattern of
2 violence. He did have summary probation, but
3 the inmate told the psychologist in 1994, which
4 was also kind of troubling, that he had the
5 mentality of a 15 year old. He indicated that
6 this tragic event, being convicted of murder,
7 was a quote "wake up call" --

8 ATTORNEY RUTLEDGE: Objection. It
9 doesn't say being convicted of murder.

10 PRESIDING COMMISSIONER BIGGERS: What
11 page are you on, sir?

12 DEPUTY DISTRICT ATTORNEY MORRISON: I
13 just -- it doesn't. I am commenting on his
14 psych report. He's -- the inmate indicated --

15 PRESIDING COMMISSIONER BIGGERS: Just a
16 second, sir. Okay. Let's keep this civil and
17 it's not written -- are you reading directly
18 from the psychologist's report?

19 DEPUTY DISTRICT ATTORNEY MORRISON: I
20 read it and then I made a parenthetical comment.

21 PRESIDING COMMISSIONER BIGGERS: Okay.
22 Then perhaps you should paraphrase it saying
23 your opinion. Continue.

24 DEPUTY COMMISSIONER MEJIA: What is
25 interesting is talking about that the immature
26 behavior at the time -- that's on Page One of
27 the report, and he stated I had the mentality of

1 a 15 year old. The official version read
2 described a juvenile man. The inmate was 25 at
3 the time of his crime. This is not a youthful
4 offender, unsophisticated (indiscernible). This
5 isn't a 15 or 16 year old gang banger. This is
6 a 25 year old out on a mission of revenge.

7 ATTORNEY RUTLEDGE: Objection. Mission
8 of revenge? Where's that from? You're supposed
9 to -- excuse me. I just want to note that the
10 DA's supposed to -- your comments are supposed
11 to be supported by documentation.

12 PRESIDING COMMISSIONER BIGGERS:
13 (Indiscernible).

14 DEPUTY COMMISSIONER MEJIA: The Appellate
15 Decision -- talking about a retaliatory gang
16 opinion -- member for a --

17 PRESIDING COMMISSIONER BIGGERS: Let's --
18 let's -- okay. Let's -- whenever --

19 DEPUTY DISTRICT ATTORNEY MORRISON: this
20 is within the range of proper comment.

21 PRESIDING COMMISSIONER BIGGERS: Then Mr.
22 Morrison, if we're gonna speculate I think we
23 need to make sure that we say and we make
24 (indiscernible) in your opinion or -- I don't
25 think that we should speculate on something of
26 this nature.

27 DEPUTY DISTRICT ATTORNEY MORRISON:

1 Commissioner, excuse me, but I'm permitted to
2 make public comment. I'm not asking you to
3 speculate. The Appellate Decision describes --

4 PRESIDING COMMISSIONER BIGGERS: I
5 understand --

6 DEPUTY DISTRICT ATTORNEY MORRISON: --
7 any motivation --

8 PRESIDING COMMISSIONER BIGGERS: I
9 understand that.

10 ATTORNEY RUTLEDGE: From another --

11 DEPUTY DISTRICT ATTORNEY MORRISON: There
12 was a rival shooting. There was a rival
13 shooting --

14 PRESIDING COMMISSIONER BIGGERS: I
15 understand that.

16 DEPUTY DISTRICT ATTORNEY MORRISON: Now,
17 if the gang goes out to retaliate --

18 PRESIDING COMMISSIONER BIGGERS: Then
19 that's the way you should phrase it -- that
20 based on --

21 DEPUTY DISTRICT ATTORNEY MORRISON: That
22 is what gang members refer to as getting
23 revenge.

24 PRESIDING COMMISSIONER BIGGERS: I
25 understand that, sir.

26 DEPUTY DISTRICT ATTORNEY MORRISON: And
27 my comment is that he was out on a mission of

1 revenge that resulted in the death and a shot up
2 neighborhood. And therefore, a particularly
3 egregious crime under Dannenberg, as the Chair
4 noted the case the inmate submitted, and he is
5 unsuitable for parole and we ask for a three
6 year denial. Thank you.

7 DEPUTY COMMISSIONER MEJIA: Let's --
8 before you do your -- let me just put on the
9 record that he does have the completion
10 paperwork, because it was very confusing -- you
11 had to really look at it. He did have Air
12 Conditioning completion in October 1997. It's
13 just confusing. It doesn't say he completed it.
14 It says his assignment (indiscernible) and Mr.
15 Plaza has completed 15 certification units, 100%
16 of the class. Maybe that how we --

17 INMATE PLAZA: A hundred percent of what?

18 DEPUTY COMMISSIONER MEJIA: Of the class.
19 I don't know what it means, sir, but it does say
20 that he has completed -- units completed. This
21 is the Education Progress Report. Normally they
22 put here completed completion, but it just say
23 completed some of the curriculum -- that's when
24 he was a Clerk. And then when he became a
25 student he completed 15 certification units,
26 100% of the class. So I would say that is
27 completion.

1 PRESIDING COMMISSIONER BIGGERS: All
2 right thank you.

3 DEPUTY COMMISSIONER MEJIA: And then
4 another one is October 28, 2000 -- October 28th
5 -- April 28th, 1995, he completed his Vocational
6 Dry Cleaning. Another confusing chrono here.
7 We may have to look at it again. A handwritten
8 (indiscernible) Teacher's Aide and
9 (indiscernible) he was a key person assisting in
10 (indiscernible) Dry Cleaning program, all areas
11 in training and development of other students.
12 He has learned all aspects of this Dry Cleaning
13 business. And it's noted here, reason for the
14 termination, his job change -- Job change
15 completed. So which means I would say
16 (indiscernible) in 1994, (indiscernible) 1995 he
17 has completed the Dry Cleaning business.

18 PRESIDING COMMISSIONER BIGGERS: So
19 basically you're saying the chrono's in support
20 of completion; just don't have the --

21 DEPUTY COMMISSIONER MEJIA: Yeah, the
22 actual completions.

23 PRESIDING COMMISSIONER BIGGERS: The
24 actual completions. ~~Ms. Rutledge, closing~~
25 please.

26 ATTORNEY RUTLEDGE: Thank you for
27 verifying that for us, Commissioner. While I'd

1 like to go off of the suitability factors, I
2 think that's most appropriate. We're here today
3 because we -- well you know why we're here, the
4 legislature sets an open term for a crime such
5 as this and -- meaning that there is a belief
6 that persons committed for first-degree murder
7 may at some point become suitable members of
8 society, people who have paid their debt to
9 society, bettered themselves, and we can all
10 feel reasonably safe that they're out among us.
11 Had this commitment offense been of the -- had
12 it been truly lying in wait -- which is a
13 special circumstance of first-degree murder
14 punishable by death, we may not be sitting here
15 today. The commitment offense itself, my client
16 has taken responsibility for it. What was said,
17 his testimony to the Court, matches what he has
18 said in earlier reports. And, under Dannenberg,
19 specifically Dannenberg, I think is supportive
20 of when you have to -- and I know you have to
21 weigh the commitment offense but weighing that
22 in, Dannenberg says if it doesn't take more than
23 it was necessary to complete the murder. This
24 victim was shot and died within minutes.

25 There's no evidence of mutilation, there's no --
26 there were no other targeted victims. We found
27 a bullet -- but we don't even know if anybody

1 was home. There's no evidence that there were
2 other people that were actually at harm at the
3 time of the shooting. In moving on to my
4 client's remorse for this offense. He has --
5 he's expressed today his remorse for this crime,
6 but I think more importantly his determination
7 to turn himself around. Had he been such a hard
8 core gang member, he'd never had made it this
9 far. We know that. We know how it is to enter
10 a prison on a Level IV and what it takes to
11 survive. And it takes a lot of determination.
12 It takes somebody who truly does realize that,
13 you know, there's a better way to live. And, I
14 think to his, you know -- the prison Chaplain
15 (indiscernible) he doesn't write letters for
16 very many inmates. This is the first one I've
17 seen. And he wrote something really important
18 because I think -- I think this really says it
19 all about my client as far as remorse would go,
20 I think that that I would speculate and submit
21 that that's -- he could be programming doing
22 everything he's supposed to do and not go to
23 church. There's got to be some -- I would
24 submit or speculate that perhaps he's got some
25 insight and a conscience to where he feels the
26 need to associate with the church. And, there
27 was a paragraph that wasn't read during the

1 letters that I just wanted to say and it was
2 written by Chaplain Lindsay. And it says,

3 "People often ask me what kind of
4 results I see in my work here in
5 the prison. I will hold up one
6 hand showing the number five, and
7 they will say those odds aren't
8 very good since there are more
9 than 7,000 plus inmates in your
10 facility. To which I'll reply,
11 you're right, except I look at it
12 as mining for diamonds and when
13 you find one you have some -- when
14 you find one you have something of
15 value."

16 Well, inmate Plaza is one of those diamonds.

17 You know, I'm not going to sit her and
18 regurgitate all of his accomplishments and the
19 binder he provided to the Board -- we've gone
20 over them. In every area of programming he's
21 met -- he's met self-help, he admits his
22 substance abuse, he's been treating that
23 substance abuse, he's done Impact, he's done
24 Anger Management, he's participating in sports,
25 he has an excellent job record. He's actually
26 got a chrono from his supervisor in Culinary
27 who's recommending him for a job, I mean,

1 anticipating that an employer on the outside
2 where the public has access to the restaurant.
3 that he's going to present that in a public
4 place and ask for employment. He has, you know,
5 taken other health courses and has not had a 115
6 or anything in 15 years, which is extremely
7 commendable. And again, that more expresses, I
8 think, his insight in to literally reversing his
9 life. He said he was leading an irresponsible
10 life at that time; however he did work and
11 support his wife and children. Did you have one
12 child at that time or --

13 INMATE PLAZA: Two.

14 ATTORNEY RUTLEDGE: He had two that he
15 supported. So he did -- it was like he said, he
16 was kind of a -- he was a dysfunctional person
17 over all, but able to maintain a job and take
18 care of his family which indicates that there
19 are pro social qualities in this man. He's not
20 just some thug out there, you know, blowing
21 people away. He has a very stable social
22 history as far as being with his family, being
23 married. He's still married to the same woman;
24 still has three children. Appreciates the
25 impetus he put on her when he entered the
26 institution and forced her into being a single
27 parent. He's got letters from his children that

1 he's attempting to father from prison, cousins,
2 other assortment of persons, and also he has at
3 least two job offers. One from Mr. Rentaria
4 (phonetic) and then one from his previous
5 employer -- was it --

6 INMATE PLAZA: Yes.

7 ATTORNEY RUTLEDGE: -- where he worked.

8 He had a good job record there before he entered
9 the institution. And aside from all the great
10 things he's done which I think all point to
11 suitability and the fact that he has expressed
12 his remorse and does, by his actions not just
13 his comments, have insight into how much trouble
14 he created with this offense and saw what he
15 needed to do to turn it around. But I think we
16 do -- I think oftentimes in these types of cases
17 there's the white elephant in the room, which is
18 time. This is his first hearing and it's almost
19 a given that nobody gets paroled their first
20 hearing. I think the jargon is always he needs
21 to maintain his gains or you point to the
22 commitment offense, but I think that the
23 suitability --

24 DEPUTY COMMISSIONER MEJIA: -- hold it.

25 [Thereupon the tape was changed to Tape Two.]

26 DEPUTY COMMISSIONER MEJIA: Okay, go
27 ahead, continue. Second side, second set of

1 tapes for Mr. Plaza.

2 ATTORNEY RUTLEDGE: I do believe that
3 this man meets every single suitability factor.
4 He has completed his programming -- I mean, he
5 remains active in his programming and he's done
6 all those things necessary to show us that he's
7 serious about release and I think the only
8 question that would linger would be time,
9 because often we don't see people paroled by
10 their first hearing but I would say this man is
11 one of the few cases that we see where he's
12 suitable at his first hearing. He's suitable.
13 He's prepared to enter the outside. He's got a
14 plan and the information he submitted to the
15 Board wherein he's going to -- exactly what he's
16 going to do when he walks out the doors. I
17 would just ask this Board -- I know it's a
18 difficult job for you and I know you've gotta
19 consider the person paying their debt to society
20 because that's part of our justice system, but I
21 would ask you to -- to give this man a different
22 look as somebody who is suitable, who has served
23 enough years according to what the Legislature
24 said and please grant him a parole date, or if
25 you find him suitable set a term for him today.

26 Thank you.

27 PRESIDING COMMISSIONER BIGGERS: Thank

1 you, very much, Ms. Rutledge. Now Mr. Plaza you
2 have the opportunity to tell this Panel why you
3 feel that you are suitable for parole.

4 INMATE PLAZA: Sorry. A little nervous.

5 I believe first of all if I could I'd like to --
6 I'd like to explain a couple of things. One
7 thing that I have heard a lot of times being
8 incarcerated that I didn't know 16 years ago --
9 I had no knowledge of what personal disorders
10 were because I was so caught up in my drug and
11 alcohol habit. I didn't look at -- I didn't
12 look at things as I should have, not normally
13 anyways. I realize that being anti social at
14 the time, you know, had me do things that any
15 normal personal would not do. It wasn't due --
16 I'm not making excuses. I never say that, you
17 know, some people do -- but I don't say that the
18 drugs or the alcohol committed the crime. I
19 understand that I was the one that made the
20 choice, and I take full responsibility for that.
21 But I do -- I also want to say that being anti
22 social, you know, my problems started at about
23 15 years old, basically. Fifteen years old, I
24 hit high school started hanging out with the
25 wrong crowd. Running with the guys, you know,
that I shouldn't have -- had no business hanging
around. But because they all were in the same

1 predicament, whether they were raised by a
2 single parent or, you know, were also seeking
3 some kind of, you know, some kind of family.
4 Some kind of acceptance. And, being that I was
5 in that same category looking for acceptance,
6 like I said earlier, I chose to hang around with
7 people that had a lot of similarities to me.
8 And because I chose to hang around with those
9 people I was around things that, you know, I
10 shouldn't have been around and drugs and alcohol
11 became my biggest problem. And I understand
12 that, you know, again a personal disorder border
13 line, I crossed a lot of border lines but laws
14 specifically because by purchasing drugs and
15 alcohol I was naturally breaking laws, you know,
16 to purchase these products. Again, you know,
17 narcissistic because I hung around with this
18 group I kind of got the feeling that I was, you
19 know, I should have respect or I should have
20 things coming just because of who I was or who I
21 hung around with. But upon coming to prison I
22 can honestly say that the very first thing that
23 helped me out was being incarcerated, of course,
24 but going to AA. When I first went to AA I
25 started realizing when I got to Step Four
26 especially because you have to take that moral
27 inventory, I started realizing and seeing

1 things. And the sponsor at that time he taught
2 us to look at things and to -- and to just, you
3 know, call them what they are. If you're lying,
4 then you're a liar. If you're stealing, then
5 you're a thief. If you're doing -- whatever the
6 circumstances might be. And so I did that, and
7 I started looking at things and, you know, to be
8 honest initially it was ugly and I -- some
9 things you know you kinda don't want to accept
10 because you want to think that, you know, you're
11 not like that or you're better than that. I
12 never wanted to accept to that, you know, that I
13 had these problems, you know, because I thought,
14 you know, hey I'm normal. There's nothing
15 different about me than the next guy. But upon
16 learning these things I started working on
17 making that change, changing my life. AA led me
18 to church. When I started going to church again
19 that was a big help because the church started
20 helping me again look at myself, and get an
21 understanding. And, once I started to get that
22 understanding I really began to make more
23 change. And, as time went on -- I mean, I
24 always got something out of the self-help

25 groups. Every group had at least something to
26 offer but as I went along I started learning, I
27 started getting the insight of my crime of

1 myself and I started realizing as well the
2 severity of my crime; you know, that it wasn't
3 just, you know, something that happened, you
4 know. It was way deeper than that. So, I
5 started looking into these things. Upon looking
6 into these things and really getting that
7 understanding, Impact -- like I said earlier,
8 the Impact was a great help to me. I started
9 learning different things from Impact as well.
10 Started getting a different perspective and
11 getting more of a panoramic vision on life, you
12 know, on everything that I'm involved in. What
13 I do. It was a Captain who -- Captain Gega
14 (phonetic), Unit Three Captain, she was the one
15 who kind of, you know, gave me that opportunity
16 as well to get into doing more than just the
17 average guy that was in there. So, I started,
18 you know, working with her. Working with her
19 you see the problems in the paperwork. I was
20 able when that riot broke out in the wing
21 between the Nationals and the Bull Dogs, which
22 is two different groups that are here -- even
23 though I'm not a part of any of the groups I
24 have a rapport because now people see me and
25 they know that I'm the opposite of them. I'm
26 constantly talking to people, trying to
27 encourage them to be their own man, to make

1 their decisions, to not follow that peer
2 pressure...and the crowd and do those things....And
3 so they -- they tell me, you know, they see
4 integrity in me, and it's something that you
5 don't see in just everybody or anybody. So
6 having that has helped me a lot. I believe that
7 through them programs -- you also -- there was
8 another letter in the packet. It was from
9 Victory Out Reach out of here in San Jose. They
10 have a program also. Not just here in San Jose.
11 They have it in every County. It doesn't
12 matter. I talked to Ed Morales who's the
13 Director there. He says it doesn't matter what
14 County you go to, they have a program that's
15 called Cease Fire and because of the education
16 and the insight that I've gotten through the
17 program he's told me, wherever you go, I want to
18 use you because you can get to these people.
19 You can reach out and talk to these people so
20 that there's never -- again there doesn't' have
21 to be another Mr. Littlebull. There doesn't
22 have to be somebody in my position, you know.
23 So that's what I look to do now, is to stop them
24 kind of things. Deter people, you know, doing
25 them kind of things. I know it's in the
26 Appellate version as well, even though no one
27 read it here today, but you know that upon my

1 reaching the County Jail, you know, I was
2 approached....Because, see, I was not -- I was
3 not an active member but I hung around with the
4 crowd. So I was approached in the County Jail
5 and, you know, was threatened. That was the
6 County Jail. Upon reaching prison -- and it
7 actually turned out to be one of the biggest
8 favors they could do for me. I was approached
9 in prison, and they told me, you're on your own.
10 You don't run with us. We don't claim you. You
11 don't claim us. Which was like I said, the
12 biggest favor they could have done for me at
13 that time. Because that was -- that was what
14 got me started as well to make that change and
15 not continue to try to pursue that road that I
16 was on prior to that point. So, being that I
17 was excommunicated -- it was good for me,
18 because then, even though they told me you're on
19 your own, and I know that in here not just
20 anybody can be out on their own. You usually
21 have to find a crowd or find a race or, you
22 know, someone. You usually gotta, you know,
23 hang out with somebody. But I was able to do
24 it. I was able to go on my own. And I started
25 to take the attitude too that, you know what,
26 I'm not gonna pay attention what other people
27 say. I don't care what, you know, what they say

1 or do because I want to be that person that I
2 know I can be. And even my own mother told me
3 that one time on visit six, seven years ago.
4 She said, you know, you've turned into that man
5 that I always wanted you to grow up to be, you
6 know. I understand that today I have an
7 opportunity to get out, come before you, and to
8 put all these things in practice. As my
9 attorney said, not just talk the talk but walk
10 the walk. And, I have things in place. I have
11 things, you know, set up where I can go and be a
12 part of society and I can go and make a
13 difference and hopefully like I said before get
14 at, you know, not just youngsters, anybody.
15 Whether they're young or old, and be able to
16 share with them and explain to them, you know,
17 educate them. You know, I'm all for
18 intervention. Intervention is good. But,
19 prevention is even better. You know,
20 intervention the problem's already there. But
21 prevention, the problems' not there yet or
22 hasn't got to that point where, you know, it's
23 too the extreme. So, I hope that today, you
24 know, the Panel would surely take a look and

25 consider me because I believe with the things
26 that I have, with all the support system that I
27 have, with the plans and the goals that I have

1 -- and it's not something that I did all my
2 life, but I do have plans and goals. And I
3 believe those plans and goals that I have now
4 are going to be the things that help me to
5 succeed, and I have no problem with any kind of
6 parole to the extreme conditions. Testing, you
7 know. Whatever I need to do. I have no problem
8 whatsoever. And so I -- I just ask if, you
9 know, you Panel members today would consider me
10 as being suitable and I thank you and I do want
11 also would like to say that this packet here was
12 not a personal attack on you. It was not meant
13 to be, you know, in any way personal. I do have
14 to say it's my first one and being unfamiliar I
15 did allow other people to kind of give me a
16 little helping hand, and if there was anything
17 that, you know, was not necessary or was an
18 overkill it was not done intentionally and once
19 my final statement because I want to make sure
20 that you know is that, again, I take full
21 responsibility for the taking of the life of Mr.
22 Littlebull and I thank you.

23 PRESIDING COMMISSIONER BIGGERS: We will
24 recess at this point.

25 R E C E S S

26 ---oo---

27

1 CALIFORNIA BOARD OF PAROLE HEARINGS

2 D E C I S I O N

3 DEPUTY COMMISSIONER MEJIA: We're back on
4 record for our decision -- on tape.

5 PRESIDING COMMISSIONER BIGGERS: Let the
6 record reflect that everyone that was in the
7 room prior to us recessing for deliberations are
8 now back in the room. The Panel has reviewed
9 all information received from the public and
10 relied on the following circumstances in
11 concluding the prisoner is not suitable for
12 parole and would pose an unreasonable risk of
13 danger to society or a threat to public safety
14 if released from prison. The offense was
15 carried out in an especially cruel and callous
16 manner in that this was a drive-by shooting
17 where a Mr. Patrick Littlebull, the victim, was
18 shot and killed as a retaliatory type crime.
19 based on what was in the Appellate Decision.
20 This offense was carried out in a calculated
21 manner, and I'll read from the -- that the --
22 decision that Mr. Plaza was

23 " -- driving slowly with his lights
24 out thus eliminating attention to

25 his approaching car was strong
26 evidence of prior planning. The

1 approach without lights is
2 factually similar to lying in
3 waiting and illustrates a
4 deliberate plan by the occupants
5 of the car to approach to victim
6 unnoticed so that the killing
7 could be accomplished from a
8 position of surprise and
9 advantage."

10 The motive for the crime was very trivial in
11 that it was a gang related shooting, and these
12 conclusions was drawn from the Statement of
13 Facts from the Appellate Decision. You have no
14 -- your criminal record was of no significance
15 to us because you had very little if any. You
16 have programmed extremely well. You should be
17 commended for no disciplinary actions. Your
18 psychiatric evaluation was favorable. Your
19 parole plans were favorable. Your 3042 response
20 from the District Attorney was opposed to your
21 -- a finding of parole suitability, and you have
22 numerous letters of support. The Panel
23 struggled with this for quite some time,
24 basically because of a couple things that I will
25 go over with you right now. First of all, the
26 signs of remorse for the victim. You say you
27 JESUS PLAZA H-12371 DECISION PAGE 2 05/01/06

1 take full responsibility for the crime, but when
2 Deputy Commissioner Mejia started talking to you
3 about the crime and what you took from the
4 victim, you went off and you started talking
5 about collateral effects of the families and all
6 the others but you never mentioned about the
7 victim. You need to -- and with that, that
8 gives us an indication that you really haven't
9 taken -- you're minimizing your involvement in
10 the crime by not knowing exactly what happened
11 to the victim. You need to get that out. We
12 -- as I said, we talked about it for quite some
13 time because we just feel that you're not --
14 it's -- you're just taking responsibility for
15 the crime is superficial, and we need to get
16 genuine remorse. So, the big thing is remorse
17 for the victim. We also feel that your gains
18 are recent, as illustrated by when we talked to
19 your earlier and the District Attorney even
20 brought this up and I went back and went over
21 the Appellate Decision as well as the sentencing
22 thing for -- you indicated initially that you
23 were not involved with the shooting. Then you
24 say you were when they told you about your
25 vehicle, and that's when you mentioned about the
26 gun. They found the gun within (indiscernible).
27 JESUS PLAZA H-12371 DECISION PAGE 3 05/01/06

1 We note that you are doing extremely well
2 programming, but we just feel that you need to
3 have more time. You should be commended for
4 your program that you have been involved with,
5 your Vocational Dry Cleaning, your Air
6 Conditioner Refrigerator, AA and NA, and the
7 Impact and Anger Management courses that you are
8 working with right now. In a separate decision,
9 the hearing Panel thought it's not reasonable to
10 expect that parole will be granted in a hearing
11 in the following two years. Again, the crime
12 itself was just especially cruel and callous in
13 that you (indiscernible) on an individual who
14 was vulnerable. He didn't have a weapon; he's
15 walking down the street, and you and your
16 co-defendant shot him. And, we realize that you
17 only drive the vehicle, but the mere fact that
18 you were there with your lights off is a strong
19 indication that you knew what was going to take
20 place. The -- and the motive for the crime as
21 we talked about earlier, was very trivial in
22 that this was a gang retaliation. All
23 indications point to this was a gang
24 retaliation. Once you've become -- once you've
25 come to grips with what transpired, allow
26 yourself to not minimize the involvement of what

1 think you'll be okay, because you're definitely
2 on the road to getting a date. But you've got
3 to take that remorse to the victim, you can't
4 generalize. You said I take full
5 responsibility. You got to take it from not the
6 family. You've got to take responsibility for
7 Patrick.

8 INMATE PLAZA: I understand.

9 PRESIDING COMMISSIONER BIGGERS: Mr.
10 Mejia?

11 DEPUTY COMMISSIONER MEJIA: No further
12 comments from me.

13 PRESIDING COMMISSIONER BIGGERS: Okay.
14 Good luck to you. That concludes the hearing.
15 The time is now ten minutes to --

16

17

18

19

20

21

22

23 PAROLE DENIED TWO YEARS

AUG 29 2006

24 THIS DECISION WILL BE FINAL ON:

25 YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT
26 DATE, THE DECISION IS MODIFIED.

27 JESUS PLAZA H-12371 DECISION PAGE 5 05/01/06

CERTIFICATE AND

DECLARATION OF TRANSCRIBER

I, RUBY M. DOUGHERTY, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total TWO in number and cover a total of pages numbered 1 - 93, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the INITIAL PAROLE CONSIDERATION HEARING for JESUS PLAZA, CDC NO. H-12371, on MAY 1, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated MAY 30, 2006, at Sacramento, California.

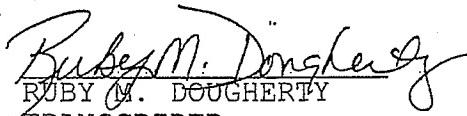

RUBY M. DOUGHERTY
TRANSCRIBER
PETERS SHORTHAND REPORTING

EXHIBIT B

**LIFE PRISONER EVALUATION REPORT
INITIAL PAROLE CONSIDERATION HEARING
DECEMBER 2005 CALENDAR
ADDENDUM**

PLAZA, JESUS

H12371

This addendum is being submitted as a correction to some inaccuracies that were found in the Board Report for Plaza's Initial Parole Consideration Hearing.

On Page 2 of the report under Aggravating Circumstances: it says use of weapon: Gun, 9mm. That information was taken from the POR pg. 2. In the Court Transcripts for the Court of Appeal of the State of California Second Appellate District Division Two Page 3, it states that a .38 revolver was found in a hollow space underneath the dashboard of the suspects. A ballistic test indicated that an expended bullet found at the scene on Loveland Street was fired from the gun that was recovered.

Under the Preconviction Factors: C. Personal Factors: The Board Report states that Plaza was born 2/7/65 to Caroline and Jessie Plaza. This should be corrected as follows: Plaza was born 3/7/65 to Caroline and Jesus Plaza. Plaza also said that his marriage took place on 5/12/84 and not 5/7/84.

Postconviction Factors: Should read as follows; Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/21/92, Plaza was transferred to Calipatria where his custody was reduced to Close B. While at Calipatria, he worked in the culinary, pre-voc. and Computer Programming. Plaza was again transferred to CSP-LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the drycleaning, voc electrical shop, and air cond. refrigerator and heating. On 12/16/97 he was transferred to Avenal where he was in Computer Programming. On 3/13/98 he was transferred to CTF Soledad North Facility where he was assigned to the yard crew 4/7/98 to 4/28/98, and then to PLA Textiles. On 12/31/98 Plaza went to CMC East as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification, Close B custody was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF Central Facility, Plaza has been assigned to wing porter, culinary, dental assistant and again culinary, where he remains assigned.

Inmate Copy

Sent to inmate on 11/29/05

PLAZA

H12371

CTF-SOLEDAD

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
2006 CALENDAR

2

J. Verdesoto 11-16-05

T. Verdesoto Date

Correctional Counselor I

D. Carnazzo CCT 11-16-05

D. Carnazzo Date

Correctional Counselor II

I. Guerra FC(1) 11-16-05

I. Guerra Date

Facility Captain

D. S. Levorse CPR 11-18-05

D. S. Levorse Date

Classification and Parole Representative

**LIFE PRISONER EVALUATION REPORT
INITIAL PAROLE CONSIDERATION HEARING
DECEMBER 2005 CALENDAR**

PLAZA, JESUS

H12371

I. COMMITMENT FACTORS:

- A. **Life Crime:** Murder 1st, (PC 187), Los Angeles County Case #VA004108.. Sentenced: 25 years to Life. Weapon: Gun. MEPD: 1/25/07. Received in CDC: October 9, 1991. Victim: Patrick Littlebull, age: unknown.

1. **Summary of Crime:** The defendant, Jesus Plaza, and another subject were seen driving a vehicle near the victim, Patrick Littlebull. A witness heard a series of shots and saw the victim Patrick collapse onto the floor. Officers arrived at the scene of a residential street in Bell Gardens and found Patrick lying on the floor in a puddle of blood. Paramedics arrived shortly after and pronounced him dead at the scene. Victim's autopsy indicated that his death resulted from a single gunshot wound to the right lateral side of his chest.

Several witnesses gave officers information about the suspects vehicle, and approximately 1 hour later, police saw the vehicle and detained the defendant along with a second suspect. Officers observed a .9mm casing on the floor board of the vehicle in front of the passenger. Both Plaza and his companion were arrested and later evaluated for evidence of gunshot residue. (Source: POR pg 2, 3 &4).

2. **Prisoner's Version:** First and foremost to each family member and friend of Mr. Littlebull. Knowing that there are no special, no specific, nor any amount of words that could right the wrong I did. Nor can any words equal or be greater than the crime in a good way, I wholeheartedly apologize yet due to multiple counseling programs and self help programs that I have seeked out throughout my incarceration. I've gained knowledge and an understanding of my crime and true remorse, and so I take full responsibility for my choices and actions in the commitment of this crime and also stipulate to the P.O.R. as being true and accurate.

3. **Aggravating/Mitigating Circumstances:**

- a. **Aggravating Factors:**

PLAZA, JESUS

H12371

CTF-SOLEDAD

DEC/2005

SENT TO IM ON 9/22/05

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LIFE PRISONER EVALUATION REPORT
 PAROLE CONSIDERATION HEARING
 DECEMBER 2005 CALENDAR

2

- ❖ Victim was particularly vulnerable.
- ❖ Prisoner had opportunity to cease but continued with crime.
- ❖ Murder was senseless and served no purpose in completing the crime.
- ❖ Use of weapon: Gun, .9mm.
- ❖ Nature of crime exhibited viciousness, cruelty or callousness.

b. Mitigating Factors:

- ❖ Prisoner has minimal or no history of criminal behavior.

B. Multiple Crime(s): N/A.

1. Summary of Crime: NA.
2. Prisoner's Version: NA

II. PRECONVICTION FACTORS:

A. Juvenile Record: None noted in Central File.

B. Adult Convictions and Arrests:

- ❖ 07/16/83 PC 594 (a) Vandalism.
- ❖ 09/17/83 PC 187 Attempted Murder (no disposition).
- ❖ 04/02/84 PC 594 Malicious Mischief/Vandalism.

C. Personal Factors: Plaza was born 2/7/65 to Caroline and Jessie Plaza. He has four sisters and a brother. Plaza graduated from high school 5/17/83 from Vail High in Montebello, CA, and then married Guadalupe Falcon on 5/7/84 and they have three children, Ramona, and Justina, and Izaiah.

III. POSTCONVICTION FACTORS:

A. Special Programming/Accommodations: N/A.

B. Custody History: Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/21/92 Plaza was transferred to Calipatria where his custody was reduced to Close B. While at Calipatria, he worked in the culinary and pre-voc. Plaza was again transferred to CSP LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the dry cleaning and voc electrical shop. On 12/16/97 he was transferred to Avenal, and on 3/13/98 he was transferred to

LIFE PRISONER EVALUATION REPORT
 PAROLE CONSIDERATION HEARING
 DECEMBER 2005 CALENDAR

3

CTF Soledad. While at CTF, Plaza was assigned to PIA Textiles. On 12/31/98 Plaza went to CMC-E as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification, Close B custody was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF, Plaza has been assigned as a porter, a dental assistant and has worked in the culinary.

- C. Therapy and Self-Help Activities: Since Plaza's incarceration, he has participated in Alcoholics Anonymous, Inmate Education Advisory Committee, Bible Study, the Impact Program, Narcotics Anonymous, served as a Deacon, and was a member of the Protestant Choir. Refer to Post Conviction Progress Reports for more details.
- D. Disciplinary History: Plaza has remained disciplinary free throughout his incarceration.
- E. Other: N/A.

IV. FUTURE PLANS:

- A. Residence: Plaza plans on living with his brother, Hector Plaza. Hector's address is 353 Carla Dr. Simi Valley, California 93063. His phone number is (805) 581-6323
- B. Employment: Plaza plans on working at Telair International 4175 Gardain Street, Simi Valley, CA 93063, phone #(805) 578-7303.
- C. Assessment: In review of Plaza's parole plans, this counselor does not foresee any problems, however, it is recommended that Plaza updates his support letters prior to his hearing.

V. USINS STATUS: NA.

VI. SUMMARY:

- A. Prior to release the prisoner could benefit from:

1. Continuing to be disciplinary free.
2. Participation in self-help and therapy programs.
3. Upgrading vocationally and educationally.

LIFÉ PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
DECEMBER 2005 CALENDAR

4

- B. This report is based upon an interview with the prisoner on 9/1/05 lasting approximately 1 hour(s) and a complete review of the Central File lasting 3 hours(s).
- C. Per the Olson Decision, Plaza was afforded an opportunity to examine his Central File on 9/1/05, Plaza did examined his Central File. (Refer to CDC 128-B dated 9/1/05 in the General Chrono Section of the Central File.)
- D. No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan (ARP) for effective communication.

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
DECEMBER 2005 CALENDAR

5

T. Verdesoto

9-20-05

Date

Correctional Counselor I

J. Soares

9/21/05

Date

Correctional Counselor II

A. Gueira

9/21/05

Date

Facility Captain

D. S. Levorse

Date

Classification and Parole Representative

EXHIBIT C

1/14/07

MENTAL HEALTH EVALUATION FOR
THE BOARD OF PRISON HEARINGS
May, 2006 Lifer Calendar

CORRECTIONAL TRAINING FACILITY SOLEDAD
APRIL, 2006

NAME: PLAZA, JESUS
CDC#: H-12371
DOB: 3/7/65
OFFENSE: PC 187 MURDER, FIRST DEGREE
DATE OF OFFENSE: 5/26/90
SENTENCE: 25 YEARS TO LIFE
EVALUATION DATE: 4/16/06
MEPD: 1/25/07

I. IDENTIFYING INFORMATION:

Mr. Jesus Plaza is a 41 year old, first term, Hispanic, married male from Los Angeles County. He is an active Christian. He has served 16 years on his sentence.

SOURCES OF INFORMATION:

This report is based upon a single 90 minute interview, plus review of the central and medical files.

II. DEVELOPMENTAL HISTORY:

When questioned about prenatal and perinatal issues, he stated that he was born at General Hospital, and his birth was normal. He progressed through developmental milestones in a normal manner. He is the second of four children. There is no history of cruelty-to-animals, enuresis or arson. He was never abused as a child, either sexually, physically or emotionally. He did have accidents as a child. One time he fell off of a pipe, injuring his leg on a fish tank. At the age of eleven he was involved in a car accident and injured his left knee which had recently been fixed through surgery.

PLAZA, JESUS
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4/15/06
PAGE 2

III. EDUCATION:

He attended public school and graduated from Vail High School in Montebello. He was never suspended or expelled. He has continued his education by attending college classes. He is attending Coastline Junior College at this time by correspondence, working towards his AA degree. He has 15 more credits until he gets his AA degree.

IV. FAMILY HISTORY:

Mr. Plaza's biological parents separated when he was about four years of age. He was raised primarily by his mother and maternal grandparents. His mother is currently employed by St. Francis Hospital, and his father worked for years as a mechanic and an auto body repairman. He is now 66 years of age and has retired. He has one older sister that works for General Electric in Pennsylvania, a younger sister who is mainly retarded who lives with his mother, and one younger brother who is married and working as a sales manager of a container corporation. There is no family history of mental illness, of drug abuse, of alcoholism, or of legal problems.

V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:

Mr. Plaza is heterosexual. There is no history of high risk behavior or of problems.

VI. MARITAL HISTORY:

He has been married one time. He was married on 5/12/84 to Guadalupe who lives in Whittier. There are three children. Ramona, 21 years of age, is working as a R.N. at St. Francis Hospital. Justina is 19 and is attending Cerritos College. Isaiah is 10 years of age. His marriage is intact, and his wife is supportive. He indicated that he has a very close relationship with his wife and children. They keep in close contact by correspondence, phone calls and several visits a year.

VII. MILITARY HISTORY:

There is no military history.

PLAZA, JESUS
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4/15/06
PAGE 3

VIII. EMPLOYMENT/INCOME HISTORY:

Right after he graduated from high school at the age of 18, he went to work for Century Plastics, where he worked for 4 ½ years. This company made fiberglass products for airplanes. He was the lead man there. In 1987, he went next door to work for Century Arrow doing the same kind of work. These two companies are owned by the same people. One year before the commitment offense, he began working for an asbestos abatement company as a laborer.

In the institution, he has obtained several trades. He has completed Vocational Dry Cleaning, Vocational Air Conditioning, Refrigeration and Heating, Vocational Meat Cutter, and he also has completed a correspondence course as a home inspector. Currently he is working as a meat cutter in culinary.

IX. SUBSTANCE ABUSE HISTORY:

Mr. Plaza stated that he did have an alcohol and drug problem from the ages of 15 to 25. He would drink alcohol primarily on weekends, because he had to work during the week. He smoked some marijuana. He also snorted cocaine about three times a week at the age of 16. At the age of 20, he began using cocaine every other day. He attends Alcoholics Anonymous and Narcotics Anonymous. He attends as often as he can, and he has been going steadily to these programs for the last 13 or 14 years.

X. PSYCHIATRIC AND MEDICAL HISTORY:

There is no psychiatric history. There is no history of serious hospitalizations, other than his surgery on his left knee. There is no history of serious accidents or of head injuries or seizures. His health is good.

XI. PLANS IF GRANTED RELEASE:

Mr. Plaza plans to return to his old employer in Simi Valley. He also will be able to live with his brother in that area. He will be compliant with all parole rules and regulations. He does have strong family support in the community. The prognosis for successful community living in this case is excellent.

PLAZA, JESUS
 H-12371
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 PAGE 4

CLINICAL ASSESSMENT

XII. CURRENT MENTAL STATUS/TREATMENT NEEDS

Mr. Plaza related in a serious, sober, and cooperative manner. Mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. He does speak excellent English as well as Spanish. Affect was appropriate. There was no evidence of anxiety or depression. Eye contact was good. His memory was intact. His judgment was intact. His insight and self-awareness were good.

Mr. Plaza has spent a great deal of time in prison trying to improve himself. He currently is attending Coastline College, working on his Associate of Arts degree. His grades are very good. Also, he has obtained a certificate as a home inspector from a professional career development institute in Georgia by correspondence. In addition, he has completed several courses towards self-improvement. He has completed a Prison Fellowship Course in Parenting, Anger Management, another 12 week anger management class, Fathers Behind Bars Activity Group, Family Effectiveness Training and Harmony in the Home, Anger Management Course, Christian Basics Class, Teddy Bear Drive Benefiting Children in Crisis, a job success course, Communicable Diseases, Impact Program focusing on the victim's rights, Christian Living Course, Laubach Literacy Tutor Program, and the Salvation Army Bible Correspondence Course.

CURRENT DIAGNOSTIC IMPRESSION

Axis I: Drug and alcohol use by history
 Axis II: No personality disorder
 Axis III: No physical disorder
 Axis IV: Life term incarceration
 Axis V: Current GAF: 95

XIII. REVIEW OF LIFE CRIME

Mr. Plaza discussed the details of the commitment offense. He accepts full responsibility for this offense. He feels very badly that the victim died. He is fully aware that the victim's family has suffered greatly at the loss of their father and husband. The fact that gunshots were fired was a total surprise to Mr. Plaza. He had no idea that this was going to happen, and there certainly was no intent on his part. He is very aware of the repercussions of this offense. Even today his wife, children and mother are being watched and approached about this situation

PLAZA, JESUS
H-12371
4/15/06
PAGE 5

by gang members. He is very concerned about their welfare. All of these situations are a result of the commitment offense. Needless to say Mr. Plaza feels deep feelings of sorrow, remorse and grief over this situation.

At the time of the commitment offense, Mr. Plaza had been using cocaine and alcohol. His judgment at that time was impaired by his use of these substances. At the time of the commitment offense he was actually under the influence. However, after 16 years there is no evidence of any involvement in drugs or in alcohol. He has continuously attended Alcoholics Anonymous and Narcotics Anonymous over the years. Since he has become Christian, he has strong values against the use of drugs or alcohol at this time in his life. He is certainly familiar with the destructive effects of this involvement. As a result, he has determined to never become involved in drugs or alcohol again in his life. This information is of historical importance only because it is not currently a diagnostic problem.

XIV. ASSESSMENT OF DANGEROUSNESS

A. In considering potential for dangerous behavior in the institution, Mr. Plaza has remained entirely disciplinary free. This is commendable. This is very difficult to do. At this time at this prison, we are having frequent racial riots. It is very difficult for a Hispanic male to disassociate himself from this activity, which can spontaneously occur in front of him, and if he doesn't get involved, he will receive retaliation. In this case, remaining disciplinary free is a very difficult and commendable achievement. There is no evidence that he has ever been involved in riots, possession of weapons, assaults on others, or threats of any kind. As a result, it is evident that his potential for dangerous behavior in comparison to other inmates is definitely below average.

Mr. Plaza has a chrono from Captain Guerra, in which it was stated that he had been hand picked to work as a communicator, working as a mediator between the two groups in the institution that had been involved in a riot against each other. Due to his ability to mediate between the groups and to get them to agree to non violence towards each other, the riot that occurred at that time was resolved peacefully, and the result was that the institution was able to unlock everybody and proceed with the program.

B. In considering potential for dangerous behavior in the community, Mr. Plaza has no prior arrests for violence before the commitment offense. He did receive an arrest as an adult in 1983 for spraying a one inch diameter dot on the wall. He has remained disciplinary free in the institution. In order to determine his risk level on parole, the Level of Service Inventory-

PLAZA, JESUS
H-12371
4/15/06
PAGE 6

Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, current adjustment, and other factors to determine current risk level. On this measure he obtained a score of 3.6 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 96 of them. This is a very low risk level. As a result, he poses no more threat to society than the average citizen in the community, and probably less threat to society at this point in his life.

- C. At the time of the offense, drugs and alcohol were a problem; however, at this point in his life this is no longer an issue. Therefore, there are no significant risk factors in this case.

XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS

There are no mental or emotional problems in this case that would interfere with routine parole planning. Mr. Plaza has obtained vocational training in several areas. He is currently working as a meat cutter in culinary. He has skills in vocational dry cleaning, as well as in vocational air conditioning, refrigeration and heating. He also has a job offer waiting for him upon his release. He has very strong family support in the community. All of these factors are good indicators of positive parole success. He has maintained his marriage, and his wife continues to be supportive and involved in his life. He maintains constant contact with his three children. Due to his study of the Bible and his commitment to the Christian way of life, he no longer has the irresponsible values and lifestyle that he did prior to the commitment offense. All of these factors indicate that his prognosis for successful adjustment in the community is excellent.

M. Macomber, Ph.D.

M. Macomber, Ph.D.
Correctional Psychologist
Correctional Training Facility, Soledad

B. ZIKA, Ph.D.
B. ZIKA, Ph.D.
Senior Psychologist
Correctional Training Facility, Soledad

D: 4/15/06
T: 4/19/06

EXHIBIT D

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**DEPT 100**

Date: SEPTEMBER 6, 2007

Honorable: STEVEN R. VAN SICKLEN
NONEJudge: JOSEPH M. PULIDO
Bailiff: NONEDeputy Clerk
Reporter

(Parties and Counsel checked if present)

BH004502
 In re,
 JESSE PLAZA,
 Petitioner,
 On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

Nature of Proceedings: ORDER RE: WRIT OF HABEAS CORPUS

The Court has read and considered the Petition for Writ of Habeas Corpus filed on February 23, 2007 by the Petitioner. Having independently reviewed the record, giving deference to the broad discretion of the Board of Parole Hearings ("Board") in parole matters, the Court concludes that the record contains "some evidence" to support the determination that the Petitioner presents an unreasonable risk of danger to society and is, therefore, not suitable for release on parole. See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 667.

The Petitioner was received in the Department of Corrections on October 9, 1991 after a conviction for murder in the first degree with a firearm. He was sentenced to 25 years to life. His minimum parole eligibility date was January 25, 2007. The record reflects that on May 26, 1990, the Petitioner was driving with fellow gang members on a street known to be the territory of a rival gang. The Petitioner drove slowly, with the headlights turned off, as he approached the victim, a rival gang member, who was standing in front of a house. As the Petitioner drove by, his accomplice fired several shots at the victim. The victim was shot and killed. The Petitioner then sped away. A witness heard the gunshots and saw the Petitioner's car speed away called the police and the Petitioner and his accomplices were pulled over and arrested.

The Board found the Petitioner unsuitable for parole after his first parole consideration hearing held on August 29, 2006. The Petitioner was denied parole for two years. The Board concluded that the Petitioner was unsuitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety. The Board based its decision primarily upon his commitment offense.

The Court finds that there is some evidence to support the Board's finding that the Petitioner's offense was carried out in a calculated and dispassionate manner. Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(B). The Petitioner drove slowly with his headlights turned off, so as to avoid detection as he approached the victim. This demonstrates that the shooting was planned and that the Petitioner was deliberately driving toward the victim for that purpose. Additionally, the Petitioner's accomplice was armed with a gun for the purpose of shooting the victim. Regardless of whether the Petitioner himself shot the victim, he was acting in concert with his accomplice and, therefore, the shooting is imputed to him.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**DEPT 100**

Date: SEPTEMBER 6, 2007

Honorable: STEVEN R. VAN SICKLEN
NONEJudge JOSEPH M. PULIDO
Bailiff NONEDeputy Clerk
Reporter

(Parties and Counsel checked if present)

BH004502

In re,
JESSE PLAZA,
Petitioner,
On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

The Court also finds that there is some evidence to support the Board's finding that the Petitioner's motive was very trivial in relation to the offense. Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(B). The Petitioner and his accomplice shot the victim merely because he was a rival gang member. There is no evidence that the victim had threatened or harmed the Petitioner in any way. Gang rivalry is a very trivial motive for killing a man.

Additionally, the Court finds that the Board did not err in denying the Petitioner parole for a period of two years. The Board must articulate reasons that justify a postponement, but those reasons need not be completely different from those justifying the denial of parole. See *In re Jackson* (1985) 39 Cal.3d 464, 479. The Board indicated that the Petitioner was denied parole for two years because his commitment offense was calculated and dispassionate and against a particularly vulnerable victim; his motive was trivial; and he failed to show adequate remorse for the victim. These reasons were sufficient to justify a two-year denial.

Accordingly, the petition is denied.

The court order is signed and filed this date. The clerk is directed to give notice.

A true copy of this minute order is sent via U.S. Mail to the following parties:

Jesse Plaza
H-12371
Correctional Training Facility
P.O. Box 689
Soledad, California 93960-0689

Department of Justice- State of California
Office of the Attorney General
300 South Spring Street
Los Angeles, California 90013

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012		CONFORMED COPY
PLAINTIFF/PETITIONER: JESSE PLAZA		SEP 07 2007 LOS ANGELES SUPERIOR COURT
CLERK'S CERTIFICATE OF MAILING <small>CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)</small>		Joseph M. Pulido CASE NUMBER: BH004502

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- Order Extending Time
 Order to Show Cause
 Order for Informal Response
 Order for Supplemental Pleading

- Order re: Writ of Habeas Corpus
 Order
 Order re:
 Copy of Petition for Writ of Habeas Corpus for the Attorney General

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

September 7, 2007
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By: Joseph M. Pulido, Clerk
Joseph M. Pulido

Jesse Plaza
H-12371
Correctional Training Facility
P.O. Box 689
Soledad, California 93960-0689

Department of Justice- State of California
Office of the Attorney General
300 South Spring Street
Los Angeles, California 90013

DOCKETING

EXHIBIT D

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JESSE PLAZA,

On Habeas Corpus.

B202665

(Super. Ct. No. VA004108)

ORDER

THE COURT:

The court has read and considered the petition for writ of habeas corpus filed October 9, 2007. The petition is summarily denied.

COURT OF APPEAL - SECOND DIST.

FILED

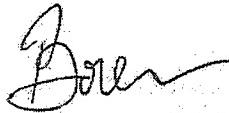
NOV 6 - 2007

JOSEPH A. LANE

Clerk

J. GUZMAN

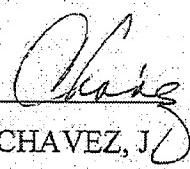
Deputy Clerk



BOREN, P.J.



ASHMANN-GERST, J.



CHAVEZ, J.

**EXHIBIT E
Part 1 of 2**

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JESSE PLAZA,

Petitioner,

v.

BEN CURRY, Warden,
Correctional Training Facility,

Respondent.

S 158421

Case No. _____

Los Angeles County
Superior Court
Case No. VA004108

Court of Appeals,
Second Appellate
District, Division
Two.
Case No. B202665

SUPREME COURT

FILED

NOV 21 2007

Frederick K. Ohlrich Clerk

Deputy

PETITION FOR REVIEW

JESSE PLAZA
CDC No. #H-12371
CTF Central F-338U
P.O. Box 689
Soledad, CA 93960-0689

Petitioner In Pro Per

1 IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
2

3 JESSE PLAZA,) Case No. _____
4 Petitioner,)
5) Los Angeles County
6 v.) Superior Court
7) Case No. VA004108
8 BEN CURRY, Warden,)
9 Correctional Training Facility,)
10 Respondent.)
11 _____
12

PETITION FOR REVIEW

13 TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE, AND TO THE
14 HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA
15

16 Petitioner, JESSE PLAZA, petitions this court for review following
17 the decision of the Court of Appeals, Second Appellate District, Division
18 Two, filed in that court on October 9, 2007, and denied in that same
19 court on November 8, 2007. A copy of the postcard denial is attached
20 hereto a Exhibit "A". Petitioner did not receive notice of this denial
until November 13, 2007, also see Exhibit "A".
21

22 Question(s) Presented

23 1) Is the Board of Parole Hearings violating the Petitioner's State
24 and Federal Due Process Rights when parole suitability determinations
25 are not supported by "some evidence", and was the "some evidence" standard
26 correctly applied in this case?
27

2) Can the California Parole Board continuously deny parole to a prisoner based on the gravity, i.e., seriousness of their commitment offense, after they have served a Penal Code B3041(a) / CCR 15 B2403(c) uniform term equal to the gravity of their crime, when the prisoner has met all prerequisite conditions to be found suitable for release and no-longer poses a threat to public safety?

3) Was the Board's unsuitability determination supported by evidence that would bring Petitioner's case within the terms of Penal Code §3041(b)?

4) Was the Board's reasoning for denial an abuse of discretion?

NECESSITY FOR REVIEW

A granting of review and resolution of these issues by this Court are necessary to secure uniformity of decision and to settle important questions of law. Courts may review the parole decisions of the Board of Parole hearings for abuse of discretion. (In re Ramirez, supra, 94 Cal.App.4th at 561-64. Accord In re Rosenkrantz, (2002) 29 Cal.4th 616, 625-26, 656-57). The Board's discretion is abused by factual findings that are not supported by "some evidence". (Id. at 563). The Board's discretion is also abused by decisions that are arbitrary and capricious in the sense that they are not based upon the applicable legal standards.

The courts may properly determine whether the Board's handling of parole applications is consistent with the parole policies established by the Legislature.... While courts must give great weight to the Board's interpretation of the parole statutes and regulations, final responsibility for interpreting the law rest with the courts.

(In re Ramirez, supra, 94 Cal.App.4th at 564, citations omitted.)

1 Furthermore, petitioner respectfully submits that reviewing the
 2 cases of In re Ramirez, (2002) 94 Cal.App.4th 549; and Biggs v. Terhune,
 3 (9th Cir. 2003) 334 F.3d 910, together demonstrates the lack of uniformity
 4 in applications of the due process standard and that the decision in
 5 the instant case conflicts with the announced Federal Due Process standard
 6 delineated in Biggs v. Terhune, (9th Cir. 2003) 334 F.3d 910. This case
 7 also provides this Court with the opportunity to redefine the meaning
 8 of the "particularly egregious" standard found in In re Ramirez, (2001)
 9 94 Cal.App.4th 549 and In re Rosenkrantz, (2002) 29 Cal.4th 616.

10 In summary, Petitioner respectfully submits that in this case "some
 11 evidence" having an indicia of reliability does not support each of the
 12 Board's findings a required by the United States Constitution, Fifth
 13 and Fourteenth Amendments, the California Constitution Article I, section
 14 15, and Biggs v. Terhune, (9th Cir. 2003) 334 F.2d 910, in not doing,
 15 so, the Board continues to violate Petitioner's State and Federal
 16 Constitutional Rights to Due Process.

17

18 INTRODUCTION

19 On May 1, 2006, Petitioner appeared before the Board of Parole
 20 Hearings for parole consideration and was found unsuitable for parole
 21 based in the unchanging factors, the circumstance of his offense. He
 22 received a two year denial. Petitioner filed in the Los Angeles County
 23 Superior Court a Petition for Writ of Habeas Corpus challenging the
 24 Board's decision to deny Petitioner a release date. On September 6, 2007,
 25 that petition was denied by the Honorable Steven R. Van Sicklin (Case
 26 No. SBH004502) On October 9, 2007, Petitioner filed in the Court of
 27 Appeal, Second Appellate District, Division Two, challenging the Board's
 28 decision denying him parole. On November 8, 2007, that petition was also

1 denied by the Court of Appeal, Second Appellate District, Division Two.
2 (Case No. QB202665). Petitioner now submits the instant petition seeking
3 review by this Honorable Court.....

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7 - See attached petition -

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6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

THE NINTH CIRCUIT COURT OF APPEALS HAS FOUND THAT THE MANDATORY LANGUAGE OF P.C. 3041 (b) IMPOSES AN AFFIRMATIVE OBLIGATION BY THE CALIFORNIA BOARD OF PAROLE HEARINGS TO GRANT PAROLE, WHICH CREATES A LEGALLY COGNIZABLE LIBERTY INTEREST IN PAROLE AND A PRESUMPTION THAT PAROLE RELEASE WILL BE GRANTED. THERE IS NO EVIDENCE HAVING AN "INDICIA OF RELIABILITY" THAT PETITIONER IS A CURRENT OR UNREASONABLE RISK TO SOCIETY. THE HEARING AND DECISION BY THE CALIFORNIA PAROLE BOARD WAS ARBITRARY AND CAPRICIOUS IN VIOLATION OF PETITIONER'S STATE AND FEDERAL DUE PROCESS RIGHTS.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Petitioner, JESSE PLAZA, petitions for a writ of habeas corpus and

by this verified petition alleges as follows:

I

Petitioner is in custody of the California Department of Corrections at the Correctional Training Facility in Soledad, California serving a term of 25 years to life following his conviction in 1991 in Los Angeles County Superior Court Case No. VA004108 wherein petitioner was convicted of first degree murder in violation of Penal Code section 187. Petitioner was received by the Department of Corrections on October 9, 1991, when his life term commenced. This petition is intended to give meaning to Petitioner, JESSE PLAZA, (hereinafter "Petitioner"), sentence of 25 years to life for 'first degree murder'. On May 1, 2006, Petitioner went before the Board of Parole Hearings for his initial parole. (Petitioner's minimum

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

1 eligible parole date is 1-25-07) for a finding of suitability, and the
2 setting of his term uniformly. Petitioner submits that the Board of
3 Parole Hearings (hereafter "Board") regulations, California Code of
4 regulations, Title 15, section 2402(a) DEMANDS that the Board set a
5 release date unless Petitioner currently presents an unreasonable risk
6 of danger to public safety. Petitioner submits that there is nothing
7 in the Board's decision indicating the basis for that belief, which
8 Petitioner discusses and proves infra.

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On May 1, 2006, the Board conducted petitioner's Initial Parole Consideration Hearing. The Board found petitioner unsuitable and denied parole for a period of two years. (Exhibit "A" 89-93) In support of its findings that petitioner currently posed an unreasonable risk to society, the Board found that the "offense was carried out in an especially cruel and callous manner", "carried out in a calculated manner", "The motive for the crime was very trivial in that it was a gang related shooting", and the unsupported conclusion that petitioner has refused to take responsibility for his actions. Petitioner was, however, commended for programming extremely well, commended for remaining disciplinary free, obtaining a positive psychological evaluation, participating in AA and NA, completing two vocations and securing positive parole plan. (Exhibit "A", p. 89-93). Despite all the evidence supporting a granting of parole, the Board found petitioner unsuitable for a grant of parole based on the commitment offense, including and unsupported conclusion that petitioner tries to minimize his responsibility.

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Petitioner alleges that there was no evidence to support the Board's finding that he poses a current unreasonable risk if released. In fact, all current, reliable evidence presented to the Board shows that petitioner poses no risk if released. Petitioner further alleges that the Parole Board violated petitioner's statutory rights and his Fifth and Fourteenth Amendments (due process rights), when it refused to grant petitioner a parole date despite evidence supporting a finding that petitioner posed no unreasonable risk of harm. Furthermore, his continued confinement constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

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Petitioner also submits the Board spoke in meaningless generalities and never specified the exact nature of Petitioner's current character that would make Petitioner a danger to society. And by not doing so, the Board violated Penal Code §3041, which dictates that the Board shall normally set a parole release date at Petitioner's Initial Hearing. Petitioner, further submits that the issue raised in this Petition are of constitutional dimension, questioning the legality of Petitioner's confinement. An indeterminately sentence prisoner must be paroled when there is no evidence that Petitioner is a current or unreasonable risk to society. The California Supreme Court has recognized that parole applicants' posses a "protected liberty interest under the California Due Process Clause". (In re Rosenkrantz, (2002) 29 Cal.4th 616, 660; cf. McQuillion v. Duncan (9th Cir. 2002) 306 F.3d 895, 901. It is well established that Courts may review the Board's parole decisions under

1 a highly deferential standard of review, and must reverse those decisions
2 if there is not "some evidence" in the record to support them.
3 (Rosenkrantz, supra 29 Cal.4th at 667; In re Smith (2003) 109 Cal.App.4th
4 489. Petitioner submits there is no evidence that Petitioner is currently
5 a threat to public safety.

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7 PETITIONER NOW SUBMITS THE FOLLOWING POINTS AND AUTHORITIES IN SUPPORT

8 OF THIS PETITION FOR WRIT OF HABEAS CORPUS

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1 MEMORANDUM OF POINTS AND AUTHORITIES

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3 THE MURDER STATUTES TOGETHER WITH THE PAROLE STATUTES
4 IMPOSE AN AFFIRMATIVE OBLIGATION UPON THE BOARD TO
5 SET PAROLE DATES IN CASES LIKE THIS ONE. THE
6 REGULATIONS IMPLEMENT THOSE STATUTES

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13 Under the Board's regulations, pursuant to Penal Code
14 §3041(b), a prisoner may be found unsuitable for parole if
15 the Board determines that the offense or a past offense and
16 its timing is of such gravity that a longer period of
17 incarceration is required in the interest of public safety.
18 The determination is made based on the standards set forth
19 by the Board's regulations. The principle guidelines in making
20 the determination is Cal. Code. Regs. §2401 (c)-(1-6):

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24 (1) Commitment Offense. The prisoner committed the offense in
25 an especially heinous, atrocious or cruel manner. The factors
26 to be considered include:

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28 (A) Multiple victims were attacked, injured, or killed
1 in the same or separate incidents.

2 (B) The offense was carried out in a dispassionate and
3 calculated manner, such as an execution-style murder.

4 (C) The victim was abused, defiled or mutilated during
5 or after the offense.

6 (D) The offense was carried out in a manner which
7 demonstrated an exceptionally callous disregard for human
8 suffering.

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(E) The motive of the crime is inexplicable or very trivial in relation to the offense.

(2) Previous Record of Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age.

(3) Unstable Social History. The prisoner has a history of unstable or tumultuous relationships with others.

(4) Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

(5) Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense.

(6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail.

Circumstances (1), (2), and (4) reasonably reflect the sole specified and authorized statutory exception to setting parole release dates, for the current or a past convicted offense(s). Factor (E) of Circumstances (1), however, pertaining to the motive of the crime as being inexplicable, although typically stated by the board as a factor for denying parole, is a rare circumstance, as there is almost always, as here, an explanation

as to why the offense occurred. Whether the motive was trivial is another matter. As one court noted:

"The epistemological and ethical problems involved in the ascertainment and evaluation of motive are among the reasons the law has sought to avoid the subject. As one authority has stated, "[hardly any part of penal law is more settled than that motive is irrelevant."

(Hall, General Principles of Criminal Law (2d ed. 1960) at p. 88; see also Husak, Motive and Criminal Liability (1989) vol. 8, No. 1, Crim. Justice Ethics 3.)"

The court further explained:

"The offense committed by most prisoners serving life sentences is, of course, murder. Given the high value our society places upon life, there is no motive for unlawfully taking the life of another human being that could not be deemed "trivial". The Legislature has foreclosed that approach, however, by declaring that murderers with life sentences must "normally" be given release dates as they approach their minimum eligible release dates. (Pen. code, §3041, subd. (a)." (In re Scott, 119 Cal.App.4th 871, 892-893.)

It is therefore questionable whether the factor has any evidentiary value in this case. If the motive was indeed inexplicable "A person whose motive for a criminal act can not be

explained or is unintelligible is therefore unusually unpredictable and dangerous." (Id.) Such is not the case here.

The primary circumstance and factors considered to make the determination, §2402(d)(1)(B) and (D), have been explained by the courts. To qualify for the authorized exception, an offense must be exceptionally egregious. The court of appeal characterized this as follows:

"*In re Van Houten* (2004) 116 Cal.App.4th 339 [10 cal.Rptr.3d 406] illustrates the sort of gratuitous cruelty required. The prisoner in that case was involved in multiple stabbings of a woman with a knife and bayonet, While she was dying, the victim was made aware her husband was suffering a similarly gruesome fate. As stated by the court, "[t]hese acts of cruelty far exceeded the minimum necessary to stab a victim to death." (Id. at p. 351) Other examples of aggravated conduct reflecting an "exceptionally callous disregard for human suffering," are set forth in Board regulations relating to the matrix used to set base terms for life prisoners (§2403, subd. (b)); namely, "torture," as where the "[v]ictim was subjected to the prolonged infliction of physical pain through the use of non-deadly force prior to act resulting in death," and "severe trauma," as where "[d]eath resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a

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weapon not resulting in immediate death or actions calculated to induce terror in the victim." (Ibid.) (In re Scott, supra, 119 Cal.App.4th 871, 892.)

In this case there is no evidence of gratuitous cruelty or torture such as described in the foregoing. Moreover, even in such cases, involving those exceptional factors, the Board's regulations and suggested terms indicate parole suitability after serving the indicated base terms.

Circumstances (3) of the unsuitability factors, "Unstable Social History" appears to be related to the commission of violent past offenses and gravity thereof. It is not a factor in this case.

Circumstance (5), "Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense." is not applicable in this case, and the Psychological Report does not indicate any such assessment.

Circumstance (6), "Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail." This should reasonably relate to misconduct like that which may result in rescission proceedings as is enumerated in Cal. Code Regs., tit. 15, §2451, or more properly, be punished by the provisions of Cal. Code Regs., tit. 15, §2410, which provides for "Postconviction Credit", and not used as a substitute for statutory "suitability" provisions which specify only the gravity of the current or a past offense to deny parole.

This "circumstance" is often relied upon by the Board to deny parole to indeterminately sentenced prisoners repeatedly and

for years at a time. Yet, determinately sentenced prisoners might suffer only the loss of a few months of credit, once, for the same misconduct, which they can even get restored. As such, the Board's determinations that rely on such circumstances to deny parole, particularly beyond the indicated matrix base terms, is unauthorized by Penal Code 3041, is unfair, unreasonable and constitutes unequal punishment for the same conduct. A blatant violation of Petitioner's due process rights protected by the 5th & 14th Amendments of the United States Constitution.

RELIANCE ON THE COMMITMENT OFFENSE TO DENY PAROLE AT
ALL INITIAL HEARINGS AND ALMOST ALL SUBSEQUENT HEARINGS
IS INCONSISTENT WITH STATUTORY LANGUAGE AND CONTRARY TO
SUPREME COURT AUTHORITY

The Board's reliance on the commitment offense to deny parole at all initial hearings and almost all subsequent hearings fails to give effect to the statutory minimum terms despite Penal Code §3041 language that parole shall normally be granted at the initial hearing. The Board promulgated regulations pursuant to Penal Code §3041(a) which include standardized gravity matrices, but routinely denies parole for the same circumstances and factors specifying appropriate terms. (See Cal. Code Regs., tit. 15, §2400 et seq., footnotes citing implementation authority.)

Although it is presumed that the Board performs its duties lawfully, it is hardly debatable that the Board does not "normally" set parole release dates, as a matter of policy. And when it does, in about 2% of cases, the Governor reverses most of those, like here, as a matter policy, where there is no substantial evidence to support the decision. See, for example, In re Capistran, (2003) 107 Cal.App.4th 1297, In re Mark Smith, (2003) 109 Cal.App.4th 489; In re Ernest Smith, (2003) 114 Cal.App.4th 343, to name a few published cases. Because of the minimal "evidence" required under the "some evidence" standard, most of the denials and reversals of parole withstand court challenges. release on parole presumed by statutory language gives rise to a substantial right, but has been disregarded. the

great majority of indeterminately sentenced prisoners have been repeatedly denied parole, but would have been released long ago under reasonable administration of the statutes and regulations.

"The Court has an obligation, however, to look beyond the facial validity of a statute that is subject to possible unconstitutional administration since a "law though 'fair on its face and impartial in appearance' may be open to serious abuses in administration and courts may be imposed upon if the substantial rights of the persons charged are not adequately safeguarded at every stage of the proceedings." Minnesota v. Probate Court (1940) 309 U.S. 270, 277.

Although the most recent interpretation of the statute at issue now holds that proportionality or comparision of like offenses is not required, i.e., In re Dannenberg (2005) 34 Cal.4th 1061, the Ninth Circuit has previously stated:

"While the interpretation gloss on the statute may bind this court as a matter of statutory construction, we are not, however, similarly bound as to the constitutional effect of the construction." McSherry, 880 F.2d at 1053" (Aponte v. Gomez, 993 F.2d 705 (9th Cir. 1993) (emphasis added).

This most recent interpretation of the statutes is

inconsistent with decisions and history leading up to the changes in the parole statutes, which prior decisions recognized, as previously discussed:

"In contrast, by altering the statutory scheme and enacting the DSL, the Legislature recited specifically that it "finds and declares that the purpose of imprisonment for crime is punishment;" (Pen. Code §1170, subd. (a)(1); all subsequent statutory references are to this code.) The new law provides that an inmate's "release date shall be set in manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public, and that will comply with the sentencing rules that the judicial council may issue and any sentencing information relevant to the setting of parole release dates. The board shall establish criteria for the setting of parole release dates and so doing shall consider the number of victims of the crime for which the prisoner is sentenced and other factors in mitigation and aggravation of the crime." (§3041, subd. (a), italics added.) The present parole guidelines were promulgated pursuant to the new act. Thus, the guidelines are not mere administrative responses to the Board's internal shifting discretion but rather reflect basic legislative alterations in the underlying parole scheme." (In re Stanworth (1982) 33 Cal.3d 176, 182.)
(Underlining emphasis added.)

Clearly, the interpretation of the law shortly after it was changed was that the Board's discretion was limited by the legislative alterations and guidelines. The changes were clearly intended to place limits on the Board's discretion:

"That, the Montana statute places significant limits on the Board's discretion is further demonstrated by its replacement of an earlier statute which allowed absolute discretion ..." Board of Pardons v. Allen, 482 U.S. 369.

Like with the Montana statute, in California the former Penal Code §3041 was completely changed, mandating the establishment of criteria for the normal setting of parole dates. Furthermore, Penal code §3041(b) clearly spells out why the board may require an extended period of incarceration. Because the Governor is bound by the same standards as the Board, the same would apply to the Governor. The current interpretive gloss on the parole and related statutes reverts plain statutory intent to the previous parole scheme by judicial omission of part of the whole, and violates principles of statutory construction, offending due process and ex post facto law.

THE "SOME EVIDENCE" STANDARD MUST "TEND LOGICALLY", AND BY "REASONABLE INFERENCE" TO ESTABLISH A FACT RELEVANT TO PETITIONER'S SUITABILITY FOR PAROLE.

Petitioner, denies the "some evidence" standard used by the Board satisfied the requirements under both state and federal due process. To satisfy the "some evidence" standard of Judicial Review of the Board's ultimate decision, only a "modicum of evidence is required". Rosenkrantz, 29 Cal.4th at 677; Hill, supra, 427 U.S. at 456. However, the "some evidence" standard applies to evidentiary sufficiency and is not a substitute for other due process requirements, Edward v. Balisok, (1977) 520 U.S. 641, 648, such as the Board's own preponderance of material and relevant evidence. (See Cal.Code of Regualtions, tit 15, section 2000 (50)(63)(91). Thus, to determine whether the Board has fulfilled it's minimal due process procedural requirements, a reviewing Court looks not first at the decision, but the process in which it arrived at that decision. Balisok, supra, Ibid.

Here the Board continues to interpret the "some evidence" standard illegally. The Boards decision in this case failed to point to evidence demonstrating that Petitioner currently presents an unreasonable risk of danger to society - the ultimate question in determining Petitioner's suitability for parole (CCR, Tit. 15, §2403, subd. (a) For this reason, the evidence underlying the Board's decision does not tend logically and by reasonable inference, to establish a fact relevant to the inmate's suitability for parole. (Morrall, supra, 102 Cal.App.4th

at pp. 298-299). The discretion of the Board to determine parole suitability, although broad, is not absolute, and the Board's decisions must be supported by "some evidence" (*In re Powell*, (1988) 45 Cal.3d 894, 902-904; see also *Terhune v. Superior Court*, (1998) 65 Cal.App.4th 864, 872-873; *In re Minnis* (1972) 7 Cal.3d 639, 646-647.

The United States Supreme Court has made it clear that the "some evidence" standard discussed in *Superintendent v. Hill* (1985) 472 U.S. 445, is only one aspect of judicial review for compliance with minimum standards of due process. The California Legislature has given the Board guidelines to follow in evaluating a parolee's eligibility for parole, mandating that the Board "shall normally" set a parole release date... "in a manner that will provide "uniform terms" for offenses of similar gravity and magnitude in respect to their threat to the public" ... (Id., quoting Penal Code §3041, subd. (a).) The Board is required to "establish criteria for the setting of parole release dates." (Ibid.) However, the Board lacks discretion to promulgate regulations that are inconsistent with governing statutes, and the judicial branch has the final word on questions of legal interpretation." (Id., citing *Terhune v. Superior Court*, supra, 65 Cal.App.4th 864, 873)(emphasis added).

Petitioner asserts that the "some evidence" standard is being applied arbitrarily by the reviewing Court's in the State of California. The Courts of California, both State and Federal, seem to have settled in for the "some evidence" standard of Judicial Review. (See, e.g., *McQuillion v Duncan*, 306 F.3d 895 (9th cir. 2002), and in *In re Rosenkrantz*, 29 Cal.4th 616 (2002).

without taking into consideration the "substantial evidence" standard which is required by reviewing courts *Consolidated Edison Co. vs NLRB*, 305 U.S. 197 (1939) (See Page 9)

The "some evidence" standard derives from the United States Supreme Court decision in *Superintendent v. Hill*, 472 U.S. 445; 105 S.Ct. 276 (1985), and is expressly a standard of "Judicial Review" for reviewing Court's, not the Board's Standard

The first California decision applying the "some evidence" standard of *Hill* was in the case of *In re Powell*, 45 Cal.3d 894 (1988). The *Powell* case was one where the Board of Prison Terms rescinded a parole grant based on a psychological report. In his petition, *Powell* argued for the "independent judgment" standard to the facts before the Board, or alternatively, the "substantial evidence" test. The People argued for the deferential "some evidence" test. *Powell* argued for the independent judgment test analogizing *habeas corpus* proceedings to administrative mandamus proceedings under California Code of Civil Procedure section 1094.5. That code section provides for review of administrative orders or decisions; in some cases it applies the independent judgment test while in other circumstances the substantial evidence test. If the former, and abuse of discretion is established when the Court, exercising its independent judgment determines the administrative findings are not supported by the weight of the evidence. If the latter, the Court must accept all evidence favorable to the Respondent as true and disregard any unfavorable evidence, if the evidence so viewed is sufficient as a matter of law, the order or decision must be affirmed. In rejecting *Powell*'s argument, the court held that standard only

applies when an administrative decision affects a vested right. This is a pivotal point. The Powell Court determined that "a prison inmate has no vested right in his prospective liberty on a parole release date". (id. at 903). It cited to pre-1977 cases of *In re Fain*, 65 Cal.App.3d 376 (1976), and to *In re McLain*, 5 Cal.2d 78, 87 (1960), also cited by Fain, *supra*. However, two critical facts were not present at the time of the decision, (1) there was no liberty interest created by pre-1977 section 3041; and (2) the California Supreme Court had not defined post-1977 section 3041, as having vested a liberty interest in a parole release date, as it did later in the Rosenkrantz decision 29 cal.4th 616 (2002), following on the heels of *McQuillion v. Duncan*, 306 F.3d 895, 901-903 (9th cir. 2002), which interpreted Section 3041 as creating an "expectancy of release" that was a cognizable liberty interest protected by federal due process. Thus, the Powell Court was wrong about whether a vested right was involved, and its decision to apply the "some evidence" standard instead of the "independent judgment test" or "substantial evidence" was also wrong because it was based on an incorrect interpretation of law.

Yet, the California Supreme Court in the Rosenkrantz case, 29 Cal.4th 616, applied the "some evidence" standard of *Superintendent v. Hill*, 472 U.S. 445 (1985), in such language as to confuse the lower Courts as to its specific purpose. i.e., the standard of judicial review. It carried forward the "some evidence" standard originally applied in *In re Powell*, 45 Cal.3d 894 (1988). The Rosenkrantz Court did not make clear that the "some evidence" standard was not a standard applied by the board

itself as a standard of proof in its deliberations. It appears that the omission by the Rosenkrantz Court of any articulation of what the Board's standard of evidence would be as a critical component to the deliberative process of weighing and balancing of evidence, has resulted in the Board not applying their own preponderance of relevant and material evidence standard (CCR, Title 15, Div. 2, Section 2000; (50) Good Cause (63) Material Evidence (91) Relevant Evidence), thereby rendering every decision to grant or deny parole completely standardless, and thus arbitrary and capricious.

Typically in California, the judicial standard of review of the ultimate decision of the Board of Parole Hearings denying parole to a prisoner has been the "some evidence" standard. *In re Dannenberg* (2005) 34 Cal.4th 1061; *In re Ramirez* (2001) 94 Cal.App.4th 549, 564; *In re Rosenkrantz*, [Rosenkrantz v] (2002) 29 Cal.4th 565, 616. Although both Rosenkrantz and Dannenberg thus affirmed the importance of judicial review of the board decisions, the decision's provide less than clear guidance as to the proper application of the "some evidence" standard articulated in both decisions. Of particular concern is the Dannenberg Court's brief discussion in dicta of the "commitment offense" factor, which can improperly be read as granting to the Board the ability to deny parole on the basis of almost any fact imaginable. As a result, there is a real risk the State will interpret the standard to assert, de facto, the power it has been expressly denied; effective immunity from meaningful judicial review of parole decision. It should be recognized, however, that

several courts are struggling to determine exactly how this standard applies. While other Court's (post Dannenberg & Rosenkratz) has held that the "some evidence" standard must apply to current dangerousness. While interpreting this standard the California Court of Appeals, Second Appellate District in the case of *In re WEN LEE*, (Oct. 17, 2006, B188831)(2006 DJDAR 13961) the Court held;

...We conclude, however, that the governor erred. The test is not whether some evidence supports the reasons the Governor cites for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety. (Cal.Code Regs., tit. 15, §2402, subd. (a) [parole denied if prisoner "will pose an unreasonable risk of danger to society if released from prison]; see *In re Scott* (2005) 133 Cal.App.4th 573, 595 ["The commitment offense can negate suitability [for parole] only if circumstances of the crime ... rationally indicate that the offender will present an unreasonable public safety risk if released form prison"] but see *In re Lowe* (2005) 130 Cal.App.4th 1405 [suggested "some evidence" applies to the factors, not dangerousness]. Some evidence of the existence of a particular factor does not necessarily equate to some evidence the parolee's release unreasonably endangers public safety.

In the case of *In re Elkins*, (Oct. 31, 2006, A111925) the

Court of Appeals, First Appellate District, held that;

..."The 'some evidence' standard is extremely deferential and reasonably cannot be compared to the standard of review involved in ... considering whether substantial evidence supports the findings" , nevertheless, it requires" ' "some indicia of reliability" ' " (Scott II, supra, 133 Cal.App.4th at p. 591, quoting Biggs v. Terbune, (9th Cir. 2003) 334 F.3d 910, 915) and "may be understood as meaning that suitability determinations must have some rational basis in fact" (Scott II, at p. 590, fn. 6).

One thing is for certain, even if a mere "some evidence" standard is to apply in this review, that standard is only a vehicle for the Court's review of the Board's decision, not a standard for the Board itself to apply. The findings to support that initial decision by the Board to deny parole, however, must be that the record indicates the Petitioner, poses a "current" danger to the public. That finding can not be based on such flimsy evidence as to render it mere whim or caprice. (See *In re Ramirez*, supra, at 564; See also *In re Powell*, (1988). To the contrary, as set forth herein, the Board's decision must be made under the preponderance of evidence standard. (Cal.Code of Reg., Title 15, Div. 2, section 2000 (50) Good Cause).

Petitioner denies the "some evidence" standard used By the Board satisfied the requirements under both state and federal due

process. Petitioner asserts reliance on the Commitment offense does not satisfy the "some evidence" standard. There is no question that under Rosenkrantz and Dannenberg the statutory "commitment offense" factor is relevant, and that it may at times be enough to deny parole on its own, neither Rosenkrantz nor Dannenberg stands for the principle that the commitment offense is always enough by itself. In fact, both cases affirmatively state that reliance on the commitment offense alone might, in some circumstances, rise to the level of a due process violation. That conclusion is consistent with the concern raised by the Ninth Circuit in Biggs v. Terbune, that the reliance on an ever-frozen, unchanging factor - such as the commitment offense - in denying parole may in certain instances violate due process. This point was also addressed in the case of In re Ramirez, 94 Cal.App.4th 549, at 571 (2001), when the Court noted that reliance on the crime after 17 years in prison was arbitrary. Petitioner has been incarcerated 17 years. While the proportionality aspects of the Ramirez decision were disapproved by the California Supreme court decision in In re Danneneberg, the entirety of Ramirez decision, including this aspect, was not disapproved. Therefore, the Board's reliance on the commitment offense violates due process. The predictive value of the crime after 17 years of incarceration is zero. Furthermore, in the case of In re Scott, 34 Cal.Rptr.3d 905 (Cal.App.1 Dist. 2005), the Court clearly reaffirmed the rationale of the Ramirez Court when it declared ..."Parole is the rule rather than the exception".... Thus, the California Board of Parole Hearings continuous use of the "some evidence" standard as their proper

standard of review is inappropriate, thus, illegal. Furthermore, reviewing Courts using the "some evidence" standard violates principles of appellate review. Substantial evidence is the standard required for a reviewing Court. *Consolidated Edison Co. of New York v. NLRB*, 305 U.S. 197 (1939). It is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Chrysler v. U.S. Environment Protection Agency*, C.A., 631 F.2d 865, 890. Under a proper analysis, the "substantial evidence" test, and not a "some evidence" review is the appropriate standard.

ALL RELEVANT AND RELIABLE POST-CONVICTION EVIDENCE
MUST BE GIVEN THE REQUIRED CONSIDERATION IN FAVOR
OF PETITIONER IN LIGHT OF THE EVIDENCE PRESENTED

Petitioner submits that the Board bases its reasons for Petitioner's continued incarceration on historical facts that can never change, thus ignoring the uncontradicted evidence of Petitioner's rehabilitation. Petitioner has achieved the very goal that is hailed by our judicial and correctional systems, coming to prison, turning his life around and committing himself wholeheartedly to bettering himself and the world around him. Petitioner asserts there is no evidence that Petitioner is currently a threat to public safety. At Petitioner's hearing the Board denied Petitioner parole using static factors, despite overwhelming evidence showing Petitioner's rehabilitation. Petitioner asserts he has taken every available step to improve his life, pay his debt to society, and prepare himself for eventual release, as it is required under penal code §3041 for eligible prisoners serving indeterminate sentences. The Board's reliance on the Commitment Offense as satisfying the "some evidence" standard of review is without merit, after removing the facts erroneously relied upon, relied exclusively upon the Commitment Offense and failed to weigh and consider Petitioner's remorse, positive psychological profile, lack of future dangerousness, and both realistic and positive parole plans including housing, education, and employment. The Board is required to consider all relevant information about a prisoner, not simply his commitment offense. His "risk of danger to society

(5) (5)

is to be assessed in light of all relevant information available to the panel. (Cal. Code Regs., tit. 15, §2402(b)).

Under the view of the California parole process, it is clear that the nature of the commitment offense can constitute a basis for denial only to the extent it sheds light on whether a prisoner "now poses a risk of danger to society". Relying on the offense after years in custody and clear evidence of rehabilitation becomes arbitrary. At some point along the parole consideration process, that excuse to refuse to set a parole date enligh of exemplary conduct and behavior becomes arbitrary, and the term, although initially valid, becomes disproportionate and therefore unlawful. As time passes, and as the appropriate uniform term for the offense approaches, the offense itself sheds less and less light on how a prisoner will behave on the outside. His record in prison, his mental health, his conduct and achievements, all shed more light on his readiness to rejoin society. (see Deluna, supra 2005 WL 268045, 6). a defendant's postcommitment institutional behavior is relevant to his suitability for parole [citing §2402, subd. (d)(9)], and has both positive and realistic parole plans (see In re Deluna, supra, 2005 WL 268045, 5- Stable Relationships with others favor parole (15 CCR §2402 subd. (d)(9), All these factors favor his release. There is no evidence Petitioner now poses a risk of danger to society.

The Board's reasons finding petitioner unsuitable is unreasonable and an abuse of discretion enligh of the evidence presented to the Board by petitioner and the Department of Corrections and Rehabilitation Psychological Department and Counselor.

At the hearing, Correctional Counselor I, T. Verdasoto testified as to Petitioner's programming, and his future residence and employment when paroled:

Therapy and Self-Help Activities: Since Plaza's incarceration, he has participated in Alcoholics Anonymous, Inmate Education Advisory Committee, Bible Study, the Impact Program, Narcotics Anonymous, served as a Deacon, and was a member of the Protestant Choir.

Postconviction Factors: Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/22/92, Plaza was transferred to Calipatria where his custody was reduced to Close B. While in Calipatria, he worked in the culinary, pre-voc. and Compute Programming. Plaza was again transferred to CSP-LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the drycleaning, voc electrical shop, and air cond. refrigerator and beating. On 12/16/97 he was transferred to Avenal where he was in Computer Programming. On 3/13/98 he was transferred to CTF Soledad North Facility where he was assigned to the yard crew 4/7/98 to 4/28/98, and then to PIA Textiles. On 12/31/98 Plaza went to CMC East as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification,

Close B was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF Central Facility, Plaza has been assigned to wing porter, culinary, dental assistant and again culinary, where he remains assigned.

Disciplinay History: Plaza has reemained disciplinary free throughout his incarceration

Residence: Plaza plans on living with his brother, Hector Plaza. Hector's address is 353 Carla Dr., Simi Valley, California 93063. His phone number is (805) 581-6323

Employment: Plaza plans on working at Telair International 4175 Gardain Street, Simi Valley, CA 93063, phone (805) 578-7303.

Assessment: In review of Plaza's parole plans, this counselor does not foresee any problems, however, it is recommended that Plaza updates his support letters prior to his hearing. (see Exhibit "B")

Dr. M. Macomber testified as to Petitioner's his current mental stability and his lack of present and future dangerous:

Psychiatric and Medical History: There is no

psychiatric history. There is no history of serious accidents or head injuries or seizures. His health is good.

Current Mental Status/Treatment Needs: Mr. Plaza related in a serious, sober, and cooperative manner. Mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. He does speak excellent English as well as Spanish. Affect was appropriate. There was no evidence of anxiety or depression. Eye contact was good. His memory was intact. His judgment was intact. His insight and self-awareness were good.

Mr. Plaza has spent a great deal of time in prison trying to improve himself. He currently is attending Coastline College, working on his Associate of Arts Degree. His grades are very good. Also, he has obtained a certificate as a home inspector from professional career institute in Georgia by correspondence. In addition, he has completed several courses toward self-improvement. He has completed a Prison Fellowship Course in Parenting, Anger Management, another 12 week anger management class, Fathers Behind Bars Activity Group, Family Effectiveness Training and Harmony in the Home, Anger Management Course, Christian Basics Class, Teddy Bear Drive Benefiting Children in Crisis, a job

success course, Communicable Diseases, Impact Program focusing on the victim's rights, Christian Living Course, Laubach Literacy Tutor Program, and the Salvation Army Bible Correspondence Course.

Current Diagnostic Impression: Axis I- Drug and alcohol use by history; Axis II- No personality disorder; Axis III- No physical disorder; Axis IV- Life term incarceration; Axis V- Current GAF: 95.

Assessment of Dangerousness: (A) In considering potential for dangerous behavior in the institution. Mr. Plaza has remained entirely disciplinary free. This is commendable. This is very difficult to do. At this time in prison, we are having frequent racial riots. It is very difficult for a Hispanic male to disassociate himself from this activity, which can spontaneously occur in front of him, and if he doesn't get involved, he will receive retaliation. In this case, remaining disciplinary free is a very difficult and commendable achievement. There is no evidence that he has ever been involved in riots, possession of weapons, assaults on others, or threats of any kind. As a result, it is evident that his potential for dangerous behavior in comparison to other inmates is definitely below average.

Mr. Plaza has a chrono from Captain Guerra, in which it

was stated that he had been hand picked to work as a communicator, working as a mediator between the two groups in the institution that had been involved in a riot against each other. Due to his ability to mediate between the groups and to get them to agree to non violence towards each other, the riot that occurred at that time was resolved peacefully, and the result was that the institution was able to unlock everybody and proceed with the program.

(B) In considering potential for dangerous behavior in the community, Mr. Plaza has no prior arrests for violence before the commitment offense. He did receive an arrest as an adult in 1983 for spraying a one inch diameter dot on the wall. He has remained disciplinary free in the institution. In order to determine his risk level on parole, the Level of Service Inventory-Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, current adjustment, and other factors to determine current risk level. On this measure he obtained a score of 3.6 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 96 of them. This is a very low risk level. As a result, he poses no more threat to society than the average citizen in the community, and probably less threat to society at this point in his life.

(C) At the time of the offense, drugs and alcohol were a problem; however, at this point in his life this no longer is an issue. Therefore, there are no significant risk factors in this case.

Clinician Observation/Comments/Reccomendations: There are no mental or emotional problems in this case that would interfere with routine parole planning. Mr. Plaza has obtained vocational training in several areas. He is currently working as a meat cutter in culinary. He has skills in vocational dry cleaning, as well as in vocational air conditioning, refrigeration and heating. He also has a job offer waiting for him upon release. He has very strong family support in the community. All these factors are good indicators of positive parole success. He has maintained his marriage, and his wife continues to be supportive and involved in his life. He maintains constant contact with his three children. Due to his study of the Bible and his commitment to the Christian way of life, he no longer has the irresponsible values and lifestyle that he did prior to the commitment offense. All these factors indicate that his prognosis for successful adjustment in the community is excellent. (see Exhibit "C")

Petitioner asserts that the rehabilitative evidence submitted by Petitioner and both the life Evaluation report and Pyschological report is supportive of release contrary to the Board's specious findings. the Biggs court addressed the Boards illegal usage of needed therapy and other illegal reasons to justify a highly illegal denial.

"The record in this case and the transcripts of Biggs hearing before the Board clearly show that many conclusions and factors relied on by the Board were devoid of evidentiary basis".

Petitioner submits that the record in this case is also devoid of evidentiary basis as to the Board's findings that evidence presented is not supportive of release, which violates due process. Petitioner further submits that despite the overwhelming evidence that Petitioner does not present a current risk to public safety. The Board arbitrarily found petitioner unsuitable for release. Petitioner asserts that the real reason given by the Board indicative of unsuitability is the commitment offense, and if allowed to identify the unchanging circumstances as indicative of unsuitability, this would put Petitioner in an impossible situation, where no matter what he shows in terms of positive behavior, reformation, self-help, work skills, parole plans, on just rehabilitation in general, he would never be able to overcome the unchanging facts of the crime. The only logical application of constitutional due process dictates what the Court in *Irons v. Warden*, 358 F.supp.2d 936, 947, (E.D.Cal. 2005) held,

, i.e., that any denial requires the presence of some in-prison behavior showing that the inmate currently presents an unreasonable risk of danger if paroled.

Here the facts of the crime have been the only real reason for denying parole. yet, those facts have never been tied to current behavior showing that Petitioner still presents an unreasonable risk at this time. A rule requiring the presence of in-prison adverse behavior to justify a denial based on the crime simply recognizes what the 9th Circuit in Biggs alluded to when it talked of the rehabilitative goals of the system, and the need to take into consideration that a person can rehabilitate themselves. This seems to be missing from the Board's current agenda and policy. This denies to Petitioner the process to which he is constitutionally due.

At this point, Petitioner has been incarcerated over 23 years (including pre- & post-conviction credit). His programming clearly shows his full rehabilitation. In drawing the line as to when a denial becomes arbitrary, that line has definitely been crossed in this case, as the Board cannot present factual findings showing a continued risk of danger based on the rehabilitative evidence presented. To the contrary, the in-prison facts are exclusively positive.

As Ramirez noted (Ramirez, 94 Cal.App.4th at 549), the paroling authority must do more than merely commend Petitioner for the hard work done to rehabilitate himself while in prison. They must actually consider these factors "as... circumstance[s] tending to show his suitability for parole." Ramirez *supra* 94 Cal.App.4th at 571-72 [emphasis in original]. Of course, all the

Board did with petitioner's extensive accomplishments was to brush them aside with several terse lines and issue superficial compliments. Obviously, no serious consideration was ever given to Petitioner's outstanding programming. Yet, the Biggs rule is clear that if an inmate "continue[s] to demonstrate exemplary behavior and evidence of rehabilitation; denying him a parole date simply because of the nature of [his] offense and prior conduct would raise serious questions involving his liberty interest in parole". *Biggs v. Terbune*, supra, 334 F.3d at 916. Here, the evidence of actual rehabilitation is beyond dispute.

The Board's inability to find anything in his current programming, demeanor or psychological condition to justify a finding of current dangerousness, the Board continuously falls back on the immutable and unchanging facts, of the crime, to base its findings of unsuitability.

Again as noted above, wherever one draws the line as to when the reliance on the unchanging facts of the commitment offense becomes a violation of due process in the abstract, under the facts here after 17 years, it clearly has passed here. Thus, the Board must do more than simply commend Petitioner for his efforts and accomplishments, and must consider them as favoring parole in evaluating suitability. *Ramirez*, supra, at 572. The Board must do this even if the factors of the commitment offense in the abstract can be said to be sufficient to deny petitioner parole.

Petitioner asserts that he has continued to be a model inmate, yet, continues to be deprived the benefits of his exemplary rehabilitation by the California Board of Parole

Hearings. The only real issue at a parole hearing is whether the inmate currently poses an unreasonable risk of danger to the public if paroled. This must be determined by an inmates post-conviction evidence of rehabilitation. Petitioner has met every prerequisites condition that warrants a finding of suitability. Because there is no evidence to support a finding that Petitioner poses a current threat to public safety of any magnitude, let alone an unreasonable level of threat, the decision denying parole cannot be sustained.

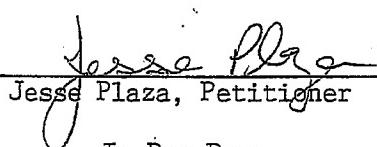
1 CONCLUSION

2 For these reasons, Petitioner respectfully submits that this Court
3 grant review to determine that his due process rights continues to be
4 abridged by the California Board of Parole Hearings and upheld by the
5 unreasonable application of clearly established Supreme Court Authority
6 and decision contrary to clearly established law standards of review under
7 the Anti-Effective Death Penalty Act of 1996.

8 The granting of review will bring up to date the guidance provided,
9 in Bigg, Ramirez and all other foermentioned cases presented, so as to
10 insure uniformity of decision making in the lower courts on issues
11 frequently litigated, and to settle questions so important that they impact
12 directly upon the rights of a person such as Petitioner to due process
13 of law under the State and Federal Constitutions.

14
15
16 Dated: Nov. 19, 2007

17
18 Respectfully submitted,

19
20 
21 Jesse Plaza, Petitioner

22 In Pro Per

23 //
24 //
25 //
26 //
27 //
28 //

**PROOF OF SERVICE BY MAIL
BY PERSON IN STATE CUSTODY
(C.C.P. § 1013(A), 2015,5)**

I, Jesse Plaza, declare:

I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterrey, State of California. My prison address is:

Jesse Plaza, CDCR #: H-12371
CORRECTIONAL TRAINING FACILITY
P.O. BOX 689, CELL #: F-328U
SOLEDAD, CA 93960-0689.

On _____, I served the attached:

Petition for Review

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

SUPREME COURT OF CALIFORNIA
350 McAllister Street
San Francisco, CA 94102-4797

OFFICE OF THE ATTORNEY GENERAL
300 S. Spring Street
Los Angeles, CA 90099-9126

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____.

Declarant

CALIFORNIA APPELLATE COURTS

Case Information

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Plaza v. The People et al.
Division 2
Case Number B202665[home](#)

Description:	Petition summarily denied by order
Date:	11/08/2007
Status:	Final B-A-C
Publication Status:	
Author:	
Participants:	
Case Citation:	

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EXHIBIT A

INITIAL PAROLE CONSIDERATION HEARING
STATE OF CALIFORNIA
BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration)
Hearing of:) CDC Number H-12371
JESUS PLAZA)
-----)

INMATE
COPY

CORRECTIONAL TRAINING FACILITY
SOLEDAD, CALIFORNIA

MAY 1, 2006

PANEL PRESENT:

ARCHIE JOE BIGGERS, Presiding Commissioner
ROLANDO MEJIA, Deputy Commissioner

OTHERS PRESENT:

JESUS PLAZA, Inmate
LAWRENCE MORRISON, Deputy District Attorney
KATERA E. RUTLEDGE, Attorney for Inmate

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____ No See Review of Hearing
_____ Yes Transcript Memorandum

Ruby M. Dougherty, Peters Shorthand Reporting

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P R O C E E D I N G S

2 DEPUTY COMMISSIONER MEJIA: We're on
3 record.

4 PRESIDING COMMISSIONER BIGGERS: Okay.

5 This is initial parole consideration hearing for
6 Jesus Plaza, P-L-A-Z-A, CDC No. H-12371. We're
7 located at the Correctional Training Facility in
8 Soledad. Inmate was received on October 9, 1991
9 from Los Angeles County. The life term began on
10 October 9, 1991 and the minimum eligible parole
11 date is January 25th, 2007. The controlling
12 offense for which the inmate has been committed
13 is murder case number -- first-degree murder
14 with a weapon. Case No. is VA004108. That's a
15 violation on criminal code PC187. The inmate
16 received a term of 25 years to life, with a
17 minimum eligible parole date of 1/25/07. Now
18 this hearing's being tape-recorded and for the
19 purpose of voice-identification each of us will
20 state our first and last name, spelling our last
21 name. When we get to you Mr. Plaza, if you
22 would please give us your CDC number after you
23 spell your last name. I will start and move to
24 my left. My name is Archie Joe Biggers,
25 B-I-G-G-E-R-S, and I'm a Commissioner.

26 DEPUTY COMMISSIONER MEJIA: Rolando
27 Mejia, M-E-J-I-A, Deputy Commissioner.

1 DEPUTY DISTRICT ATTORNEY MORRISON:

2 Lawrence Morrison, M-O-R-R-I-S-O-N, Los Angeles
3 District Attorney.

4 ATTORNEY RUTLEDGE: Katera E. Rutledge,
5 R-U-T-L-E-D-G-E, attorney for Mr. Plaza.

6 INMATE PLAZA: My name is Jesus Plaza,
7 last -- CDC number is H-12371.

8 [Recording equipment malfunction, placement of
9 equipment, background noise, and volume of
10 participants resulted in indiscernible content.]

11 PRESIDING COMMISSIONER BIGGERS: Okay.

12 Thanks to all of you. Mr. Perez is there an ADA
13 statement that was passed over there to you? Do
14 you see that? It should have been right next
15 to--

16 INMATE PLAZA: (Indiscernible).

17 PRESIDING COMMISSIONER BIGGERS: -- would
18 you please read that out loud for us?

19 INMATE PLAZA: "The Americans with
20 Disability Act, ADA, is a law to
21 help people with disabilities.

22 Disabilities are problems that
23 make it harder for some people to
24 see, hear, breathe, talk, walk,
25 learn, think, work, or take care
26 of themselves than it is for
27 others. Nobody can be kept out of

1 public places or activities
2 because of a disability. If you
3 have a disability you have the
4 right to ask for help to get ready.
5 for your BPT hearing, get to the
6 hearing, talk, read forms and
7 papers, and understand the hearing
8 process. BPT will look at what
9 you ask for to make sure that you
10 have a disability that is covered
11 by the ADA, and that you have
12 asked for the right kind of help.
13 If you do not get help or if you
14 don't think you got the kind of
15 help you need, ask for a BPT 1074
16 Grievance Form. You can also get
17 help to fill it out."

18 PRESIDING COMMISSIONER BIGGERS: All
19 right. Do you understand what that means Mr.
20 Plaza?

21 INMATE PLAZA: Yes, I do.

22 PRESIDING COMMISSIONER BIGGERS: And what
23 does it mean in your own words please.

24 INMATE PLAZA: In my own words I believe
25 it's saying if I have any disability or need
26 help during this hearing I have the right to
27 have those provided for me.

1 PRESIDING COMMISSIONER BIGGERS:

2 (Indiscernible) we're talking about things like
3 hearing, eye -- do you wear glasses?

4 INMATE PLAZA: No.

5 PRESIDING COMMISSIONER BIGGERS: Okay.

6 Do you have any hearing impairment?

7 INMATE PLAZA: No, I don't.

8 PRESIDING COMMISSIONER BIGGERS: And you
9 can walk without any problems?

10 INMATE PLAZA: Yes.

11 PRESIDING COMMISSIONER BIGGERS: Okay.

12 Have you ever been included in the Triple CMS or
13 EOP Program?

14 INMATE PLAZA: Never.

15 PRESIDING COMMISSIONER BIGGERS: Okay.

16 So you don't suffer from any disability that
17 would prevent you from participating in today's
18 hearing?

19 INMATE PLAZA: Not at all.

20 PRESIDING COMMISSIONER BIGGERS: Counsel,
21 do you feel that your client's ADA rights have
22 been met? Ms. Rutledge?

23 ATTORNEY RUTLEDGE: Yes, Sir.

24 PRESIDING COMMISSIONER BIGGERS: Thank
25 you. This hearing is being conducted pursuant
26 to Penal Code Section 3041 and 3042 and the
27 rules and regulations of the Board of Prison

1 Terms governing parole consideration hearings
2 for life inmates. The purpose of today's
3 hearing is to consider the number and the nature
4 of the crimes you were committed for, your prior
5 criminal and social history, your behavior and
6 programming since your commitment. We have had
7 the opportunity to review your Central File, and
8 you will be given the opportunity to correct or
9 clarify the record. We will reach a decision
10 today, and find -- and inform you whether or not
11 we find you suitable for parole and the reasons
12 for our decision. If you are found suitable for
13 parole, the length of your confinement will be
14 explained to you. Before we go any further, I
15 want to advise you that we expect you to be
16 fully honest with us today, especially with this
17 being your initial hearing. So in the event
18 that you don't get a date today, this here will
19 form the foundation for all future hearings.

20 INMATE PLAZA: I (indiscernible).

21 PRESIDING COMMISSIONER BIGGERS: Any
22 false statement you make today could have an
23 adverse effect on your ability to get a date at
24 a later time in the event that you don't get a
25 date today. Nothing that happens here today
26 will change the findings of the Court. We are
27 not here to retry your case. We are here to

1 determine if you are suitable for parole. Do
2 you understand that?

3 INMATE PLAZA: I understand.

4 PRESIDING COMMISSIONER BIGGERS: The
5 hearing will be conducted in two phases. I will
6 discuss with you the crime you were committed
7 for, your prior criminal and social history.
8 Deputy Commissioner Mejia will talk to your
9 about parole plans, letters of support and
10 opposition, your counselor's report and your
11 psychological evaluation. Once that is
12 concluded, both Commissioners, the District
13 Attorney, and your attorney will ask you
14 questions. Questions from the District Attorney
15 shall be asked through the Panel and your
16 answers should be directed to the Panel. Before
17 we recess for deliberation, the District
18 Attorney, your attorney, and you will be given
19 the opportunity to make a final statement
20 regarding your suitability, followed by
21 statements -- if we had victims, it would be --
22 (indiscernible) follow with the victims, but
23 since we don't have any we don't worry about
24 that one. California Code of Regulations states
25 that regardless of time served a life inmate
26 shall be found unsuitable for and denied parole
27 if in the judgment of the Panel the inmate would

1 pose an unreasonable risk of danger to society
2 if released from prison. You have certain
3 rights. Those rights include the right to a
4 timely notice of this hearing, the right to
5 review your Central File. Did you review your
6 Central File?

7 INMATE PLAZA: Yes.

8 PRESIDING COMMISSIONER BIGGERS: And the
9 right to present relevant documents. Ms.
10 Rutledge, do you believe that your client's
11 rights have been met.

12 ATTORNEY RUTLEDGE: Yes.

13 PRESIDING COMMISSIONER BIGGERS: Okay.

14 Thank you, ma'am. You have an additional right
15 to be heard by an impartial Panel. Do you have
16 any objection to the Panel members?

17 INMATE PLAZA: No, none at all.

18 PRESIDING COMMISSIONER BIGGERS: Okay.

19 All right. I'm going to ask Ms. Rutledge, do
20 you have any objections to the Panel
21 (indiscernible)?

22 ATTORNEY RUTLEDGE: No, Sir.

23 PRESIDING COMMISSIONER BIGGERS: Thank
24 you. You will receive a written copy of our
25 tentative decision today. That decision becomes
26 effective within 120 days. A copy of the
27 decision and a copy of the transcript will be

1 sent to you, and you will have 90 days from that
2 date to appeal if you so desire. Now, I need to
3 let you know that the Board has eliminated its
4 appeals process. If you disagree with anything
5 that happens in today's hearing, you have the
6 right to go directly to the Court with your
7 complaint.

8 INMATE PLAZA: I understand.

9 PRESIDING COMMISSIONER BIGGERS: Okay,
10 thank you. You are not required to admit your
11 offense or discuss your offense. However, this
12 Panel does accept the findings of the Court to
13 be true. Do you understand that?

14 INMATE PLAZA: Yes, I (indiscernible).

15 PRESIDING COMMISSIONER BIGGERS: Okay,
16 thank you. I'm gonna pass a -- over to your
17 attorney and then to the District Attorney what
18 I've have marked as Exhibit One so that we can
19 make sure that we're all using -- on the same
20 set of documents.

21 DEPUTY DISTRICT ATTORNEY MORRISON:

22 District Attorney has all the documents, thank
23 you.

24 ATTORNEY RUTLEDGE: The -- Mr. Plaza, the
25 defense has all (indiscernible).

26 PRESIDING COMMISSIONER BIGGERS: Thank
27 you, ma'am. Thank you, sir. Commissioner

1 Mejia, is there any confidential material in the
2 file?

3 DEPUTY COMMISSIONER MEJIA: No. No
4 confidential information.

5 PRESIDING COMMISSIONER BIGGERS: Okay.

6 Are any additional documents to be submitted?

7 ATTORNEY RUTLEDGE: I (indiscernible) we
8 did submit --

9 PRESIDING COMMISSIONER BIGGERS: And I
10 read those (indiscernible) read the statement
11 into the record, because I want to make sure it
12 he gets into the record. I read, I think it was
13 the last two pages that had to do with matrix
14 and all the other stuff in there -- but I -- and
15 I -- but want to get it on record, so -- to
16 make sure that it is in the transcript.

17 ATTORNEY RUTLEDGE: Do you want me to
18 read it or him to do that?

19 PRESIDING COMMISSIONER BIGGERS: It
20 doesn't matter, which ever you prefer.

21 ATTORNEY RUTLEDGE: This was taken from
22 -- Mr. Plaza had submitted to the Board a
23 memorandum of evidence and law in support of
24 parole suitability and this is directed to the
25 Board.

26 "Introduction, the California Code
27 of Regulations Title XV Division

1 Two hereafter XV Section 2245,
2 states in part, 'The prisoner is
3 responsible for bringing to the
4 attention of the hearing Panel any
5 issues pertaining to his rights
6 under this article or any failure
7 to comply with these rules. A
8 prison may waive any of these
9 rights. Any such waiver shall be
10 documented.' I wish to bring to
11 the attention of this Panel at
12 this time that I do have the right
13 to present this document at this
14 hearing to have it entered into
15 the record. Moreover, the Panel
16 must --"

17 That's moot since the Panel's accepting it. Is
18 that correct?

19 DEPUTY COMMISSIONER MEJIA: Yes, it is.

20 ATTORNEY RUTLEDGE: Okay. In the third
21 paragraph, my client submits this memorandum
22 because he does not wish to intentionally or
23 unintentionally waive any of his rights under
24 the law, and that he wants that all evidence in
25 support of finding suitability be stated for the
26 records and for purposes of appeal if necessary.

27 PRESIDING COMMISSIONER BIGGERS: Before

1 you go any further. Normally, everything that
2 we do, that's why it's on record. So, I just
3 want to make sure that you now understand that
4 we -- our job is to make sure that we do
5 everything under due process and we are aware of
6 everything that happens in Title XV:

7 INMATE PLAZA: That's right.

8 PRESIDING COMMISSIONER BIGGERS: Okay?

9 So, go ahead, ma'am, please.

10 ATTORNEY RUTLEDGE: Moving on to the
11 memorandum incorporates the following -- relies
12 upon the Court rulings.

13 "InRe Rosencrance,
14 (indiscernible); InRe Rosencrance
15 for LA County Superior Court, Case
16 No. AH10298; InRe Caswald,
17 210DJDJR10845; InRe McWillion,
18 U.S. Court of Appeals for the 9th
19 Circuit, Case No. 0055182; InRe
20 Ramirez, 9th Circuit Court of
21 Appeals, Case No. A0092699; InRe
22 Biggs, U. S. Court of Appeals,
23 Case No. VH002016; InRe Deluna,
24 126 Appellate Court, 585; InRe
25 Low, 130 Appellate Court, 1418 --"

26 PRESIDING COMMISSIONER BIGGERS: Excuse
27 me, what was that? What was the -- what's the

1 relation of the Low case in this hearing?

2 ATTORNEY RUTLEDGE: How are we applying
3 the Low case to this hearing? This is being
4 presented by my client; I have not read the Low
5 case.

6 DEPUTY DISTRICT ATTORNEY MORRISON: Well,
7 I have a -- I have a question (indiscernible) if
8 I may. The inmate can present anything he
9 wants, but this sounds like legal arguments.
10 The inmate has an attorney -- he's gonna have an
11 attorney -- he can make whatever arguments he
12 wants if he gonna represent himself then he can
13 make legal arguments. But he doesn't get to
14 make legal arguments and have an attorney.

15 ATTORNEY RUTLEDGE: Yes, he does.

16 There's nothing -- sometimes he can have an
17 attorney --

18 PRESIDING COMMISSIONER BIGGERS: Excuse
19 me. What I'm doing right now is allowing him to
20 read his document into the file. When we start
21 talking about the opposing statements and
22 getting into all the others, then that's when I
23 will put a stop to that. But I want to get this
24 in the file, and I have something to say once
25 you finish..

26 ATTORNEY RUTLEDGE: And I would -- I
27 would remind the Panel that under Title XV the

1 people have no standing to object to anything
2 that the inmate does.

3 PRESIDING COMMISSIONER BIGGERS: Exactly.

4 ATTORNEY RUTLEDGE: Thank you. All
5 right. So -- "InRe Shapudis, 135 Appellate
6 Forth 217 at 227; Irons versus Carey 408 F
7 Third, 1165 9th Circuit." Now Page Two goes to
8 the commitment offense so --

9 PRESIDING COMMISSIONER BIGGERS: You can
10 skip that one. In fact, I think you can skip
11 the last three pages, I just wanted to get those
12 things on the record for you (indiscernible)
13 others because what I wanted to let you know sir
14 is that those cases are a matter of law, and you
15 can use those any times when you appeal if for
16 some reason you don't get a date. But there are
17 a couple that you forgot to mention. One of
18 those is Dannenberg, and we'll talk about that a
19 little later on. I would appreciate -- I think
20 you've done a superb job of putting this package
21 together. My only comment on that is I think
22 sometimes that you don't who -- by going in
23 there and doing certain things, there's a
24 difference between shall, will, and can't.

25 INMATE PLAZA: I understand.

26 PRESIDING COMMISSIONER BIGGERS: Okay.

27 So. All right.

1 ATTORNEY RUTLEDGE: Can I -- there's an
2 -- I still have to lodge a couple of objections
3 whenever the Panels --

4 PRESIDING COMMISSIONER BIGGERS: No
5 problem. So those are the additional documents.
6 Now, you say you have some preliminary
7 objections? What are they now?

8 ATTORNEY RUTLEDGE: Well, our first
9 objection would be -- well, we would ask that
10 the Panel -- under 2236 my client will be
11 discussing everything but the commitment offense
12 with the Panel. We ask that the people not be
13 allowed to refer to him not discussing the case,
14 and that again we're just reiterating that the
15 people don't have standing to object to any of
16 our statements and may not advise the Panel on
17 the law, and that would be all aside from what
18 would be in the package.

19 DEPUTY DISTRICT ATTORNEY MORRISON:
20 (Indiscernible) recommend that (indiscernible)
21 represents the citizen of Los Angeles, it's part
22 of public comment that we're entitled to make on
23 any subject regarding suitability for parole.

24 ATTORNEY RUTLEDGE: You can during your
25 closing. Other than that you have no standing.

26 PRESIDING COMMISSIONER BIGGERS: She's
27 right about that. You do have the right to do

1 that in Closing Statements (indiscernible). He
2 can in fact though ask questions. If your
3 client elects not to answer them that's
4 something entirely different, but he does have
5 the right to ask questions as well.

6 ATTORNEY RUTLEDGE: Of my client,
7 correct. Yes. Okay.

8 PRESIDING COMMISSIONER BIGGERS: Are
9 there any other preliminary objections?

10 ATTORNEY RUTLEDGE: No, Sir.

11 PRESIDING COMMISSIONER BIGGERS: Okay. I
12 assume from what you just told me that the
13 inmate will be speaking to us about everything
14 but the crime?

15 ATTORNEY RUTLEDGE: Yes.

16 PRESIDING COMMISSIONER BIGGERS: Okay.
17 Would you raise your right hand please, Mr.
18 Plaza. Do you solemnly swear or affirm that the
19 testimony you give at this hearing will be the
20 truth and nothing but the truth?

21 INMATE PLAZA: I do.

22 PRESIDING COMMISSIONER BIGGERS: Thank
23 you. I'm gonna read into the record from the
24 Appellate decision the facts of the committing
25 offense.

26 "On May 26, 1990, Mr. Plaza was an
27 active member of the King Cobra

1 juvenile gang. (Indiscernible)

2 Silva, S-I-L-V-A, Mr. Plaza's

3 co-arrestee was also an active

4 member of the King Cobras.

5 Patrick Littlebull,

6 L-I-T-T-L-E-B-U-L-L, the victim,

7 was a member of the Bell Garden

8 (phonetic) --" is that local --

9 INMATE PLAZA: It's always been

10 miss-spelled, but it's supposed to be locos as

11 in crazy.

12 PRESIDING COMMISSIONER BIGGERS: Locos.

13 INMATE PLAZA: Locos.

14 PRESIDING COMMISSIONER BIGGERS: Locos.

15 INMATE PLAZA: Yeah.

16 PRESIDING COMMISSIONER BIGGERS: Okay.

17 --- a rival juvenile gang. Fifty-nine hundred

18 block of Loveless (phonetic) Street was a known

19 hangout of the Bell Garden Locos."

20 INMATE PLAZA: There you go.

21 PRESIDING COMMISSIONER BIGGERS: "On May

22 26, 1990 at around 10:00 p.m.

23 Rosario Quevedo, Q-U-E-V-E-D-O,

24 and her sister, Martha -- and I'll

25 spell the last name --

26 P-A-L-A-C-I-O-S, returned from

27 church with their children and

1 parked their car in front of their
2 apartment at 5940 Loveless Street.
3 Quevedo, Q-U-E-V-E-D-O, noticed
4 some individuals standing and
5 talking to each other on the
6 sidewalk in front of the car. She
7 also saw a car approaching from
8 the opposite direction with its
9 lights off and stop across the
10 street. Rosario and Palatono --
11 P-A-L-A-C-I-O-S -- then heard
12 gunshots. Quevedo panicked and
13 drove away. When they returned a
14 short time later, they saw the
15 victim lying face down in the
16 street in front of the apartment
17 building. Jesus Zamora,
18 Z-A-M-O-R-A, made a pizza delivery
19 for Dominoes Pizza about 10:00
20 p.m. that evening at 5918 Loveless
21 Street. After delivering the
22 pizza he pulled into the driveway
23 at 5918 Loveless Street to write
24 in his delivery book. As he was
25 writing, he heard the sound of
26 gunfire and the sound of a car
27 coming rapidly in his direction.

1 He saw a car traveling on Loveless
2 Street without the headlights on.
3 The car passed Zamora and turned
4 the car, straddling the curve.
5 The lights of the car then came
6 on, and Zamora saw the number 33
7 on the license plate. He also
8 noted that the car was a gray
9 Caprice. He later related his
10 observations to Bell Garden Police
11 Officer Reuben Musquiz,
12 M-U-S-Q-U-I-Z. Officer Musquiz
13 then broadcast a description of
14 the gray Caprice over the police
15 radio. Around 10:50 p.m., Bell
16 Police Officer Baley Hooper,
17 H-O-O-P-E-R, observed a silver
18 Caprice with 33 on it as the last
19 two numbers on the license plate."
20 And then I'm going to skip down and say -- well,
21 let me read this in too.
22 "-- proceeded westbound on
23 Florence Avenue near the 710
24 Freeway bridge. He radioed for
25 assistance and followed the car
26 into a driveway. Plaza, who was
27 driving, and passenger Danny Silva

1 exit the vehicle. They were
2 detained and subsequently
3 arrested. Brown paper bags were
4 placed on the hands of Plaza and
5 Silva so they -- that they -- be
6 tested for gunshot residue.

7 Analysis residue from a pellet in
8 Silva's hand indicate that Plaza
9 and Silva had either shot a gun,
10 handled a gun, or had been within
11 with two (indiscernible) feet of a
12 gun as it was fired."

13 Okay. That's enough for the record. And since
14 you're not gonna be talking about the crime
15 itself -- and counsel if I touch on an area that
16 you want to object to, that's fine, I need to
17 ask a couple of things though. At one time you
18 denied your involvement.

19 INMATE PLAZA: Yes.

20 PRESIDING COMMISSIONER BIGGERS: Okay.

21 When did you change that?

22 INMATE PLAZA: I'd have to say about an
23 hour into the interrogation.

24 PRESIDING COMMISSIONER BIGGERS: An hour
25 into the interrogation?

26 INMATE PLAZA: Yes.

27 PRESIDING COMMISSIONER BIGGERS: Well, I

1 was looking at the Appellate Decision and it
2 indicated -- I thought it looked like it was a
3 little bit longer than that.

4 ATTORNEY RUTLEDGE: He maintains he was
5 the driver of the vehicle, and they never --
6 there were two people. Both people found in the
7 car had gunshot residue. There was a third
8 person that was never tried.

9 PRESIDING COMMISSIONER BIGGERS: Never
10 tried, but yeah there were two. The two that
11 had the residue was Mr. Plaza and Mr. Silva; is
12 that correct?

13 INMATE PLAZA: That's correct.

14 PRESIDING COMMISSIONER BIGGERS: Okay.

15 Can you tell me how you got the residue on your
16 hands?

17 INMATE PLAZA: Yes, I handled the gun
18 after it was fired plus I was in the vicinity of
19 the shots being fired.

20 PRESIDING COMMISSIONER BIGGERS: Within
21 two to four feet is what you're saying?

22 INMATE PLAZA: Yes, Sir.

23 ATTORNEY RUTLEDGE: Okay, I think we're
24 getting into the commitment offense --

25 PRESIDING COMMISSIONER BIGGERS: Okay.

26 At one time you talked about the (indiscernible)
27 you requested it be turned to a manslaughter

1 (indiscernible), right?

2 INMATE PLAZA: My lawyer did, yes.

3 PRESIDING COMMISSIONER BIGGERS: Yes.

4 And that was shot down by the Appellate

5 Decision. Are you still a member of that King
6 Cobra gang?

7 INMATE PLAZA: I was never technically a
8 member, but I was an associate. I hung around
9 with gang members, to be totally honest. I hung
10 around with several different gang members.

11 People that I hung around with were from
12 different gangs.

13 ATTORNEY RUTLEDGE: (Indiscernible).

14 INMATE PLAZA: Oh, being born and raised
15 in East LA there's gangs all around.

16 PRESIDING COMMISSIONER BIGGERS: Yeah,
17 there are -- some gangs are not as violent as
18 otters. There are some gangs that are just
19 locals that hang out, too.

20 INMATE PLAZA: Not that I know of.

21 PRESIDING COMMISSIONER BIGGERS: Okay.

22 Well, I'm familiar with LA. Not all of them are
23 Bloods, Crips, or whatever names that they have.
24 You indicated that you have spent a lot of time
25 hanging around those people. Were you aware
26 that -- well, that's getting back into the
27 crime. Were you aware that -- the night in

22.

1 question, were you in with some of those known
2 gang members?

3 INMATE PLAZA: Yes.

4 PRESIDING COMMISSIONER BIGGERS: Did you
5 have any idea what was going to take place?

6 ATTORNEY RUTLEDGE: We would -- that
7 would -- sorry, I have to object to --

8 PRESIDING COMMISSIONER BIGGERS: All
9 right.

10 ATTORNEY RUTLEDGE: But we would accept
11 the --

12 PRESIDING COMMISSIONER BIGGERS: Findings
13 of the

14 ATTORNEY RUTLEDGE: -- Appellate --

15 PRESIDING COMMISSIONER BIGGERS:
16 Appellate Decision. Okay.

17 ATTORNEY RUTLEDGE: Yes.

18 PRESIDING COMMISSIONER BIGGERS: All
19 right. Then I will go and just look and see
20 what else I think is -- talking about your
21 priors.

22 DEPUTY DISTRICT ATTORNEY MORRISON:

23 Excuse me, Commissioner. I'm sorry, I may have
24 missed it with all of this discussion. But did
25 the Chair read the official version of the crime
26 into the --

27 PRESIDING COMMISSIONER BIGGERS: I read

1 it from the Appellate Decision. Yes, it is.

2 DEPUTY DISTRICT ATTORNEY MORRISON:

3 Because the Appellate Decision is pretty
4 lengthy.

5 PRESIDING COMMISSIONER BIGGERS: Yeah,
6 and I read that in --

7 DEPUTY DISTRICT ATTORNEY MORRISON:

8 That's right. Okay.

9 ATTORNEY RUTLEDGE: It's probably why you
10 fell asleep during that part.

11 PRESIDING COMMISSIONER BIGGERS: All
12 right -- we're not going to have that now.

13 ATTORNEY RUTLEDGE: Just teasing.

14 PRESIDING COMMISSIONER BIGGERS: I know.
15 We're going to keep everything on the up and up
16 here. Okay. And did you have a juvenile
17 history, because when I went through this I
18 couldn't find anything. It says not available
19 to Probation Department as far as five years
20 after that. Did you have any juvenile history?

21 INMATE PLAZA: (Indiscernible).

22 PRESIDING COMMISSIONER BIGGERS: And the
23 only adult history that you had was -- you were
24 given 24 months probation for some vandalism --

25 INMATE PLAZA: Yes.

26 PRESIDING COMMISSIONER BIGGERS: What was
27 that about?

1 INMATE PLAZA: I was arrested for
2 vandalizing a store -- store property.

3 PRESIDING COMMISSIONER BIGGERS: Why did
4 you do that?

5 INMATE PLAZA: To be honest with you, I
6 was walking down the street; I was intoxicated,
7 I seen the can sitting on the floor, I picked it
8 up, what made we think I wanted to know what
9 color it was I really am not sure today while I
10 did that, but I did spray a one-inch diameter
11 dot on the wall to see what color the can was
12 and that's what I was arrested for -- a one-inch
13 diameter dot on the wall.

14 PRESIDING COMMISSIONER BIGGERS: And they
15 gave you two-years probation for that?

16 INMATE PLAZA: Yes.

17 ATTORNEY RUTLEDGE: It's usually three
18 years under the Penal Code.

19 PRESIDING COMMISSIONER BIGGERS: Yeah,
20 but that -- there had to be some extenuating
21 circumstances as to priors --

22 DEPUTY DISTRICT ATTORNEY MORRISON:

23 Misdemeanor probation in LA County summary
24 probation is frequently two years. Sometimes
25 for a (indiscernible) it's only one year.

26 ATTORNEY RUTLEDGE: But under the Penal
27 Code you don't have to justify three years. You

1 just give three years.

2 PRESIDING COMMISSIONER BIGGERS: Okay,
3 well, my question to you -- was there anything
4 else that led them to give you only two years?

5 INMATE PLAZA: I wouldn't know.

6 PRESIDING COMMISSIONER BIGGERS: Okay.
7 Let's talk a little bit about your drug -- do
8 you have -- do you have a drug history?

9 INMATE PLAZA: Yes, I do.

10 PRESIDING COMMISSIONER BIGGERS: Okay.

11 And what was your drug of choice?

12 INMATE PLAZA: Cocaine.

13 PRESIDING COMMISSIONER BIGGERS: Cocaine.
14 And it says that you began snorting cocaine
15 three times a week at the age of 16 --

16 INMATE PLAZA: Yes.

17 PRESIDING COMMISSIONER BIGGERS: -- and
18 you continued use of this of -- until age 18,
19 and you stopped at age 20.

20 INMATE PLAZA: Actually that's incorrect.
21 I never actually stopped. I just decreased for
22 a minute, and then I just elevated up until the
23 time I was arrested.

24 PRESIDING COMMISSIONER BIGGERS: Were you
25 -- the night you were arrested were you involved
26 in alcohol or cocaine or anything?

27 INMATE PLAZA: Both. Alcohol and

1 cocaine.

2 PRESIDING COMMISSIONER BIGGERS: When did
3 you start using alcohol?

4 INMATE PLAZA: I'd say age 15.

5 PRESIDING COMMISSIONER BIGGERS: You were
6 still living at home, were you not?

7 INMATE PLAZA: Yes, I was.

8 PRESIDING COMMISSIONER BIGGERS: Were
9 your parents aware that you were using cocaine
10 and getting involved in drinking?

11 INMATE PLAZA: No, not at all?

12 PRESIDING COMMISSIONER BIGGERS: How
13 could you hide that?

14 INMATE PLAZA: Well, my father'd been
15 gone since I was about four years old so he's
16 not in the picture. My mother, due to trying to
17 support me and my other siblings -- she worked
18 -- usually she had -- numerous times she usually
19 had two jobs at a time. She's work day and
20 night, so by the time she'd get home I'd already
21 be home in bed.

22 PRESIDING COMMISSIONER BIGGERS: Okay.

23 Did you -- I'll get in your social here
24 (indiscernible) in a few minutes. But I wanted
25 to find out were you -- let me go back. You
26 were talking about the cocaine usage. You
27 started using it at an early age right?

1 INMATE PLAZA: Yes.

2 PRESIDING COMMISSIONER BIGGERS: How did
3 you support yourself in getting that?

4 INMATE PLAZA: I had a job. I used to
5 work after school through the Cedar Program.

6 PRESIDING COMMISSIONER BIGGERS: Cocaine
7 is a fairly expensive drug, isn't it?

8 INMATE PLAZA: Yes, it is.

9 PRESIDING COMMISSIONER BIGGERS: Okay.
10 Were you buying it on the street?

11 INMATE PLAZA: Yes, I was.

12 PRESIDING COMMISSIONER BIGGERS: Costing
13 you a pretty penny to do that, wasn't it?

14 INMATE PLAZA: Yeah, pretty much all my
15 money.

16 PRESIDING COMMISSIONER BIGGERS: Okay,
17 and you still say that your parents did not know
18 that you were doing this?

19 INMATE PLAZA: No, they didn't.

20 PRESIDING COMMISSIONER BIGGERS: How
21 about alcohol? What was your drink of alcohol
22 that you liked?

23 INMATE PLAZA: Mainly my drink was
24 Miller.

25 PRESIDING COMMISSIONER BIGGERS: Miller?

26 INMATE PLAZA: Yes.

27 PRESIDING COMMISSIONER BIGGERS: And you

1 would take that in conjunction with?

2 INMATE PLAZA: Well, the alcohol started
3 off as a, you know, what they call a gateway
4 drug. It was the beginning of alcohol which led
5 me to the cocaine and that was pretty much the
6 two main -- my two main choices of alcohol and
7 drug of choice was cocaine.

8 PRESIDING COMMISSIONER BIGGERS: Okay.

9 Under Social Factors, you were born on February
10 the 7, 1965 to Caroline and Jessie (phonetic)
11 Plaza.

12 INMATE PLAZA: I believe there's an
13 addendum behind that -- there's a --

14 PRESIDING COMMISSIONER BIGGERS: Yeah,
15 that said he was born on 3/7/65.

16 INMATE PLAZA: That's correct, yes.

17 PRESIDING COMMISSIONER BIGGERS: Then you
18 got -- the marriage took place on 5/12/84.

19 That's your marriage, right?

20 INMATE PLAZA: Yes.

21 PRESIDING COMMISSIONER BIGGERS: Getting
22 back to your -- you've got four brothers -- four
23 sisters and a brother?

24 INMATE PLAZA: Yes.

25 PRESIDING COMMISSIONER BIGGERS: Okay.

26 Are they still -- are all of them still living?

27 INMATE PLAZA: Yes, they are.

1 PRESIDING COMMISSIONER BIGGERS: Is any
2 of them incarcerated?

3 INMATE PLAZA: No. And also if I might
4 add, two of -- the two youngest sisters are
5 actually half-sisters. They're from my dad's
6 second marriage.

7 PRESIDING COMMISSIONER BIGGERS: Okay.

8 And your wife's name is --

9 INMATE PLAZA: Guadalupe.

10 PRESIDING COMMISSIONER BIGGERS:

11 Guadalupe Falcon (phonetic)?

12 INMATE PLAZA: Yes.

13 PRESIDING COMMISSIONER BIGGERS: And you
14 married on 5/7/84, and you have three children.

15 INMATE PLAZA: That should be 5/12.

16 PRESIDING COMMISSIONER BIGGERS: You have
17 12 children?

18 INMATE PLAZA: No, no, I'm saying the
19 date. It should be 5/12; you said 5/7.

20 PRESIDING COMMISSIONER BIGGERS: Five
21 seven, and it should be 5/12.

22 INMATE PLAZA: It should be 5/12/84.

23 PRESIDING COMMISSIONER BIGGERS: Okay.

24 We'll make sure that that gets in to your
25 official record regardless of what happens here.

26 INMATE PLAZA: What was the question --

27 I'm sorry --

1 PRESIDING COMMISSIONER BIGGERS: Do you
2 have three kids? Three kids?

3 INMATE PLAZA: Yes, three children.

4 PRESIDING COMMISSIONER BIGGERS: And, in
5 going through your file I saw that there was a
6 letter from your wife and I'm sure that
7 Commissioner Mejia will get in to. Any problems
8 with the marriage?

9 INMATE PLAZA: I'd be lying if I said no.
10 Sure, we have problems. But I mean nothing that
11 we haven't gotten through.

12 PRESIDING COMMISSIONER BIGGERS: Well,
13 I'm talking about because of incarceration
14 (indiscernible).

15 INMATE PLAZA: Oh, yeah, well sure, you
16 know. It's been hard on her being the single
17 mother herself now. It was hard on me not being
18 there able to support her. When I first left, I
19 was the main source of, you know, support for
20 the house so when I first go incarcerated she
21 pretty much had to take everything on and do
22 everything on her own, you know, and she kind
23 of, you know, she felt abandoned, you know, and
24 she had every right to feel that way because she
25 had to just take over the whole household.

26 PRESIDING COMMISSIONER BIGGERS: Did you
27 think about that when you were associating with

1 these known gang members? That that possibility
2 -- that that could happen?

3 INMATE PLAZA: At the time, no, because
4 my -- my thought -- my thought process wasn't on
5 responsibility. To me responsibility was, I had
6 a job, I paid the bills, I put food on the
7 table, there was a roof over their heads, they
8 had clothes on their backs. I thought that was
9 responsibility. I didn't realize that it was a
10 lot more to responsibility than that.

11 PRESIDING COMMISSIONER BIGGERS: But you
12 were still -- you still had your drug habit and
13 everything else --

14 INMATE PLAZA: And work. Yeah, I, you
15 know, I functioned, you know, to the -- to
16 everyone else I seemed to function in a normal,
17 you know, capacity, but of course it was, you
18 know, things behind the scenes that nobody knew
19 about.

20 PRESIDING COMMISSIONER BIGGERS: Okay.
21 Commissioner, do you have any questions on this
22 subject?

23 DEPUTY COMMISSIONER MEJIA: Yeah, maybe
24 about the remorse (indiscernible).

25 PRESIDING COMMISSIONER BIGGERS: Go.
26 ahead.

27 DEPUTY COMMISSIONER MEJIA: How do you

1 feel about the man who was killed?

2 INMATE PLAZA: I'm -- in the case of the
3 victim, I take full responsibility for the taking
4 of his life. I can understand remorse. I've
5 dealt with, you know, people dying around me in
6 the past. It's not something that I'm new to.
7 I understand that it not only affected him but
8 it affected his family. It affected friends of
9 his, society. I understand that technically we
10 all -- we all have times in our lives when we
11 wish we could turn back the clock but that's not
12 possible. But I do take full responsibility for
13 my actions.

14 DEPUTY COMMISSIONER MEJIA: How do you
15 feel about the death of the victim; that's what
16 I asked you.

17 INMATE PLAZA: The death of the victim?

18 DEPUTY COMMISSIONER MEJIA: Yeah, the
19 human being that was killed. How do you feel
20 about him being shot and being killed? I know
21 all the peripheral that you said. -- I
22 (indiscernible) I want (indiscernible) how do
23 you feel about him?

24 INMATE PLAZA: I'm very remorseful for
25 the victim, for taking his life. He -- I'm very
26 sorry that it happened. It was something that
27 should not have happened. He didn't deserve

1 that, and I just can't -- I mean, there are no
2 words that'll make it better or make it go away.

3 DEPUTY COMMISSIONER MEJIA:

4 (Indiscernible) that's it. I really don't have
5 any questions.

6 PRESIDING COMMISSIONER BIGGERS: Okay.

7 Then I'll ask you to go into the Post Conviction
8 Factors, please.

9 DEPUTY COMMISSIONER MEJIA: Okay. This
10 is your initial parole consideration hearing Mr.
11 Plaza, and your custody history is that you were
12 initially accepted to the Wasco State Prison RC
13 in 1991. You were transferred to California
14 State Prison Folsom new facility in 1991,
15 December. You were at Wasco in October, then
16 December in 1991 you went to the Old Folsom
17 (indiscernible). Then 2/21/1992, you went to
18 CSP Calipatria, North and East. February of
19 1994 you went to Lancaster, then 12/16/1997
20 Avenal State Prison. And you went
21 (indiscernible) in 1998 of March, CTF. You had
22 a brief period of time in CMF for medical issues
23 --

24 INMATE PLAZA: Correct.

25 DEPUTY COMMISSIONER MEJIA: And
26 (indiscernible) you have several jobs, and the
27 most recent job is the (indiscernible) Porter?

1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: And you have
3 an associate (indiscernible). During your
4 incarceration you went to education
5 (indiscernible) electronics -- vocational
6 Electronics, Air Conditioning, Refrigeration, Dry
7 Cleaning, Plumbing. You were a Porter and also
8 a Teacher's Aide, Infirmary Dental Assistant.
9 And, you have a high school diploma that 1983.
10 You have a 12.0 TABE score. (Indiscernible) you
11 have completed 32 units out of the Coastline
12 Community College?

13 INMATE PLAZA: Yes.

14 DEPUTY COMMISSIONER MEJIA: And, you -- I
15 see that you have really attempted to get some
16 trades -- completion of vocational trades. You
17 have completed, I think, 19 certification units
18 when it comes to Air Conditioning and
19 Refrigeration?

20 INMATE PLAZA: I've completed the whole
21 course.

22 DEPUTY COMMISSIONER MEJIA: You completed
23 that whole course?

24 INMATE PLAZA: Yes.

25 DEPUTY COMMISSIONER MEJIA: That's a
26 problem. I couldn't find a completion. I saw
27 the Certificate of Completion for the -- each

1 unit that's a component to the Refrigeration.

2 So you do have it there?

3 INMATE PLAZA: I believe --

4 DEPUTY COMMISSIONER MEJIA: That would be

5 good for the record, because I -- I saw the

6 certifications units been completed

7 (indiscernible) and how about the Data

8 Processing? I saw that you have completed 22

9 such units also?

10 INMATE PLAZA: Yeah, that was not a total
11 completion --

12 DEPUTY COMMISSIONER MEJIA: So,
13 Vocational Air Conditioning and Refrigeration --
14 you completed this?

15 INMATE PLAZA: Yes.

16 DEPUTY COMMISSIONER MEJIA: Okay. That
17 is the documentation.

18 ATTORNEY RUTLEDGE: (Indiscernible).

19 DEPUTY COMMISSIONER MEJIA: You know,
20 well you said that you completed two trades but
21 I can't find them in the file.

22 INMATE PLAZA: Yes, I understand the last
23 -- '95. On one of my doc hearings -- I think
24 it's right here (indiscernible). At one of my
25 doc hearings, the Commissioner went through my
26 paperwork and verified finding the --

27 DEPUTY COMMISSIONER MEJIA: Do you have a

1 copy of that --

2 INMATE PLAZA: -- chrono and the
3 certificate, but it is no longer in the file.
4 No, I do not have a copy. It's no longer in the
5 file, but the Commissioner did see it at one
6 point in time.

7 DEPUTY COMMISSIONER MEJIA: I saw that,
8 yeah. The doc -- was that Patterson --
9 Commissioner Patterson?

10 ATTORNEY RUTLEDGE: It looks -- Robert
11 Patterson, yeah. It looks to be his signature.

12 DEPUTY DISTRICT ATTORNEY MORRISON: This
13 (indiscernible) is that a progress hearing or
14 something?

15 PRESIDING COMMISSIONER BIGGERS: No --
16 Documentation Hearing. Before they go through
17 initial they give them (indiscernible).

18 DEPUTY COMMISSIONER MEJIA: I don't see
19 any in here. I've checked. No, I know you
20 counted -- I counted 19 units. I'm just
21 surprised that you have all these documents; you
22 don't have the -- I'm not saying that you're not
23 telling the truth, but you're so organized about
24 everything else. But the most important is what
25 you have completed. All the cert units are
26 there -- are there, and I know what you learned,
27 but the completion certificate is the most

1 important because that will count as a --

2 INMATE PLAZA: I understand.

3 DEPUTY COMMISSIONER MEJIA: -- check

4 completed. And, I cannot depend on what the

5 Deputy Commissioner saw. Maybe he had the

6 mistake of easing certification of it or

7 completion of it. I look at your file, and it's

8 like I said, you've got everything else but I

9 can't see the completion. Even on the other,

10 you know your education progress reports.

11 Nothing says (indiscernible) that you completed,

12 but I'm giving you credit for 19 certification

13 units of Air Conditioning and Refrigeration.

14 You also took some vocational Dry Cleaning,

15 which you haven't completed --

16 INMATE PLAZA: It's also a completion.

17 DEPUTY COMMISSIONER MEJIA: Oh, yeah?

18 What year did you complete that?

19 INMATE PLAZA: I believe it's -- it's on

20 that same page or the one before.

21 DEPUTY COMMISSIONER MEJIA: I guess, I

22 think you should just bring me the completion

23 chrono.

24 INMATE PLAZA: I don't have them

25 ATTORNEY RUTLEDGE: Four ten '95 is what

26 he has noted here, 4/10/95.

27 INMATE PLAZA: The last time I went

1 through the Board that -- when Patterson went
2 through the doc hearing -- when I went through
3 the doc hearing with Patterson -- '95. I had
4 the paperwork with me. When I hit Avenal I lost
5 half of my property and since then I have not
6 had --

7 DEPUTY COMMISSIONER MEJIA:

8 (Indiscernible) contact the vocational --
9 education where you took it -- the prison where
10 you took it, and ask for a copy of the
11 completion chrono or something to prove that you
12 have completed it. That's something you can do.

13 ATTORNEY RUTLEDGE: It says the
14 Refrigeration would have been 10/1/91, so that
15 was --

16 PRESIDING COMMISSIONER BIGGERS: Excuse
17 me, Commissioner Mejia. When you went through
18 your C-file, did you not notice that those
19 things were not there?

20 INMATE PLAZA: I did, but when I had seen
21 that paperwork from the Chairman the --
22 Commissioner, from the doc hearing, I thought it
23 was going to be enough since he seen it and
24 noted it on his record.

25 PRESIDING COMMISSIONER BIGGERS: Yeah,
26 but (indiscernible) entirely different Panel we
27 have to go by the documentation --

1 INMATE PLAZA: I understand.

2 PRESIDING COMMISSIONER BIGGERS: So,

3 whenever you review whatever make sure that you
4 have those papers.

5 DEPUTY COMMISSIONER MEJIA: Did you
6 complete your Vocational Plumbing?

7 INMATE PLAZA: No, I was never in
8 plumbing. I don't know where plumbing came
9 from.

10 DEPUTY COMMISSIONER MEJIA: Well I have
11 your diploma that -- Mr. Plaza has been unable
12 to complete any certification units in
13 vocational plumbing due to his being house in
14 Level IV. Student left in the plumbing class
15 long enough to be fully evaluated.

16 PRESIDING COMMISSIONER BIGGERS: What
17 prison was that in?

18 DEPUTY COMMISSIONER MEJIA: ASP Avenal --
19 Avenal State Prison.

20 INMATE PLAZA: I was in Wasco for, I
21 think, three months and two weeks. But I was
22 never in plumbing that I can remember. Soon as
23 I got there they came out with the new law of
24 the Close Custody -- not being, you know, not
25 being able to be in that facility they
26 transferred me over here.

27 DEPUTY COMMISSIONER MEJIA: Well, we'll

1 just leave it that you're claiming that you have
2 completed Air Conditioning and Refrigeration; is
3 that correct?

4 INMATE PLAZA: Dry Cleaning, Air
5 Conditioning and Refrigeration.

6 DEPUTY COMMISSIONER MEJIA: Dry Cleaning
7 you have completed?

8 INMATE PLAZA: Yes.

9 DEPUTY COMMISSIONER MEJIA: What year was
10 the dry cleaning, again?

11 INMATE PLAZA: I believe it was '94 --

12 ATTORNEY RUTLEDGE: The Dry cleaning was
13 -- I have completed 4/10/95, the Dry Cleaning
14 and then the Air Conditioning, 10/1/99. What
15 was the other one?

16 DEPUTY COMMISSIONER MEJIA: Most recent
17 (indiscernible) Home Inspection.

18 INMATE PLAZA: I got that.

19 DEPUTY COMMISSIONER MEJIA: Okay. So,
20 you're saying that you completed Air
21 Conditioning and Vocational Dry Cleaning?

22 INMATE PLAZA: Yes.

23 DEPUTY COMMISSIONER MEJIA: And Air
24 Conditioning Refrigeration? Anything else?

25 INMATE PLAZA: The Home Inspection, and
26 the --

27 DEPUTY COMMISSIONER MEJIA: I'll go

**EXHIBIT E
Part 2 of 2**

1 through that. But the actual vocational trade
2 (indiscernible) because I know you took Data
3 Processing, you did --

4 INMATE PLAZA: No, no --

5 DEPUTY COMMISSIONER MEJIA: -- assembly
6 --

7 INMATE PLAZA: Yeah, I was not in the
8 class --

9 DEPUTY COMMISSIONER MEJIA: Well, these
10 are the two major ones that you're saying that
11 you completed. Dry Cleaning, and Air
12 Conditioning and Refrigeration.

13 INMATE PLAZA: Yes.

14 DEPUTY COMMISSIONER MEJIA: And then you
15 did have -- completed the International
16 (indiscernible) institute course, 8/23/1994.

17 INMATE PLAZA: That's Dry Cleaning.

18 DEPUTY COMMISSIONER MEJIA: That's
19 connected to Dry Cleaning?

20 INMATE PLAZA: Yes.

21 DEPUTY COMMISSIONER MEJIA: Then you have
22 -- you been in AA since 1994?

23 INMATE PLAZA: Ninety-three, '93, yeah
24 somewhere around there. I don't remember the
25 exact date.

26 DEPUTY COMMISSIONER MEJIA: But the
27 chrono I saw was for '94.

1 INMATE PLAZA: Ninety-four.

2 DEPUTY COMMISSIONER MEJIA: Okay, that's
3 fine. And you're still going --

4 INMATE PLAZA: Yes.

5 DEPUTY COMMISSIONER MEJIA: -- according
6 to these last chronos, 4/1/2006. Going to the
7 (indiscernible) Labauche Literacy Program, peer
8 education program, Christian Fellowship, courses
9 in Anger Management 2005, CLN courses, you've
10 been (indiscernible) also Christian basic
11 classes, you been involved in Teddy Bear
12 (indiscernible) Teddy Bear Drive, Softball -- I
13 see all this stuff in there. But I'm concerned
14 about the major ones; AA, NA, Anger Management,
15 (indiscernible) Impact is good. Impact
16 programming -- you did some peer education
17 program (indiscernible) sexually transmitted
18 diseases, Hepatitis. You did some Bible --
19 seven-week Bible Study series Christian Living.
20 Let's see. Anything else you want to add?

21 ATTORNEY RUTLEDGE: Can I ask you,
22 Commissioner, would you -- do you have the
23 completion of AA since '94 or we don't?

24 DEPUTY COMMISSIONER MEJIA: I have the
25 chronos since 1994. What's the first one --

26 ATTORNEY RUTLEDGE: Okay, I just wanted
27 to make sure we didn't need to verify --

1 DEPUTY COMMISSIONER MEJIA: Oh, no, it's
2 good --

3 ATTORNEY RUTLEDGE: Thank you.

4 DEPUTY COMMISSIONER MEJIA: -- 1994,
5 group therapy in 1994 is the first documentation
6 of him going to AA. He did make (indiscernible)
7 time positively. He did some softball. You
8 been going to softball, playing games and you're
9 part of the team and like I said -- anything
10 else? Those are the major ones that I have.
11 I've (indiscernible) that you have completed.

12 No 115s and no 128(a)s. According to the 812
13 you do have affiliation or membership in
14 Southside King Cobra. I have no other -- other
15 than the 812 that the counselor completes every
16 year when you go to classification I have no
17 other information about him being involved in
18 any gang (indiscernible) in prison. And, now
19 we're going to go through your psych reports.

20 Of course, there's two. Since this is your
21 initial, we're gonna do -- I'm gonna read both
22 the -- this was done -- the first one was done
23 in July 21st, 1994, in Lancaster, by Dr. Isaac
24 (indiscernible), and the diagnosis -- Diagnostic
25 Impression at that time is Axis I, Poly
26 Substance Abuse; Axis II, Combat Disorder, group
27 kind; Axis III, to be evaluated by physicians;

1 Axis IV, Psycho Social Stressors, from mile to
2 moderate incarceration; Axis V, Global
3 Assessment of Functioning of 70, sentence and
4 incarceration; and according to the doctor that
5 their recommendation is -- he said at that
6 present time,

7 "In 1994 it was difficult to
8 assess the psychopathology that's
9 related to the crime. The inmate
10 does not reveal many details due
11 to the appeal process. However it
12 seems that he was involved in
13 behavior (indiscernible) by lack
14 of regard for others, drugs and
15 alcohol abuse. The inmate has
16 improved while incarcerated. He
17 made a statement 'I grew up. I'm
18 mature.' Quote unquote. It's
19 also an observation of his
20 examiner. The inmate was able to
21 express himself in a manner that
22 indicated (indiscernible)
23 increased maturity. Living in a
24 controlled setting it is too early
25 to make any assessment. However
26 his record indicates that he is
27 able to follow rules and

1 regulations and is also doing
2 above average programming.

3 (Indiscernible) recommended that
4 --"

5 [Thereupon the tape was turned over.]

6 DEPUTY COMMISSIONER MEJIA: --

7 psychological report on Mr. Plaza.. "It is
8 recommended for him to continue his work
9 involving trade and other meaningful
10 activities." Then we have the most current,
11 which is -- which is dated April 15th, 2006, by
12 Dr. Macomber, M-A-C-O-M-B-E-R, and the
13 Diagnostic Impression is Axis I, Drug and
14 Alcohol Abuse by history; Axis II, no
15 personality disorder; Axis III, no physical
16 disorder; Axis IV, Life Term Incarceration, GAF
17 of 95. This --

18 "He does speak in excellent
19 English as well as Spanish.

20 Affect was appropriate. There was
21 no evidence of anxiety or
22 depression. Eye contact was good.

23 His memory was intact
24 (indiscernible) was intact. His
25 insight and self-awareness were
26 good. Assessment of
27 Dangerousness. In the potential

1 -- the prisoner's potential for
2 dangerous behavior in the
3 institution. Mr. Plaza has
4 remained entirely
5 disciplinary-free. This is
6 commendable."

7 And the Causative Factors,

8 "He said that he has disassociated
9 himself from the activity of
10 Hispanic (indiscernible). No
11 evidence that he had ever been
12 involved in riots, possession of
13 weapons, assaults and other --
14 threats of any kind. At this time
15 in this prison we have been --
16 there has been frequent riots, and
17 it is very difficult for a
18 Hispanic male to disassociate
19 himself from this activity which
20 can spontaneously occur in front
21 of him and if he doesn't get
22 involved he will receive
23 retaliation. In this case
24 remaining disciplinary-free is a
25 very difficult and commendable
26 achievement. But because of his
27 being disciplinary-free

1 (indiscernible) finds him
2 definitely below average in
3 comparison to other inmates.
4 (Indiscernible) considering his
5 dangerous behavior in the
6 community -- potential for
7 dangerous behavior in the
8 community, Mr. Plaza has no prior
9 arrest for violence before the
10 commitment offense. He did
11 receive an arrest as an adult
12 making a (indiscernible) spraying
13 a one-inch diameter dot on the
14 wall. He remains
15 disciplinary-free in the
16 instituting. In order to examine
17 this prisoner's level on parole,
18 the level of (indiscernible) was
19 administered and it's indicated
20 the 12 measures that assess
21 criminal history, substance abuse
22 history, current adjustment, and
23 other factors to determine risk
24 level -- this measure he obtained
25 a score of 3.6 (indiscernible)
26 frequencies for prison for prison
27 inmates. This means that if 100

1 men were released on parole, he
2 would be (indiscernible) better on
3 parole than 96 of them. This is a
4 very low risk level; as a result
5 he poses no more threat to society
6 than the average citizen in the
7 community, and probably less
8 threat to society at this point in
9 his life. At the time of his
10 offense, drugs and alcohol were a
11 problem. However, at this point
12 in his life it is no longer an
13 issue therefore there are no
14 significant risk factors for this
15 case."

16 Any addition to my presentation, counsel, that I
17 missed -- you want to --

18 ATTORNEY RUTLEDGE: Did you mention how
19 he's helped other -- he's been like a mediator
20 for other gangs?

21 PRESIDING COMMISSIONER BIGGERS: Yeah, he
22 mentioned that.

23 ATTORNEY RUTLEDGE: Okay (indiscernible).
24 That covers everything that we had including
25 what we submitted.

26 PRESIDING COMMISSIONER BIGGERS: Okay,
27 we're going to parole plans. Residence plans;

1 you're living with your brother Hector Plaza.
2 Hector's residence is 353 Carla Drive, Simi
3 Valley, California, 93063, and it's got a phone
4 number here. Employment; Plaza plans on working
5 Italia International, 4175 Dragon Street, Simi
6 Valley California. I saw the letter of -- that
7 documents that. Also your brother's letter.
8 Assessment in re of Plaza's parole plans. "This
9 counselor does not foresee any problems.
10 However, it's recommended that Plaza updates his
11 parole letters prior to this hearing." I have
12 -- this letter's here (indiscernible) Dale Air
13 International from Nick Gillichbauer,
14 G-I-L-L-I-C-H-B- as in Boy A-U-E-R. It's
15 indicated that he's the General Manager of the
16 organization and he's willing to give him
17 employment in the company and he will make \$9.00
18 per hour as an assembler, working in assembly
19 with the basic hours of 7 o'clock to 3:30 p.m.
20 He will have (indiscernible) basic benefits of
21 medical and dental. And there -- some of your
22 support letters now. Jessica Plaza, dated
23 February 20, 2006, a support letter indicating
24 that -- lots of support from all the family and
25 we need to (indiscernible) his mind and heart
26 set to accomplish all the right things and not
27 wrong things, for taking time to read this

1 letter of support. She (indiscernible) says
2 that she will -- Isabelle Plaza. Your sister
3 also wrote a letter February 5, 2006. It
4 doesn't say that you can -- yeah, it's
5 supporting your release, but -- so Jessie --
6 Jesus Plaza is some brother that you're going to
7 be staying with --

8 INMATE PLAZA: No -- my dad is Jesus.

9 DEPUTY COMMISSIONER MEJIA: Your dad --
10 your dad is Jesus Plaza? There's another
11 letter, February 5, 2006. It says that you're
12 ready to go back to society. There is Hector
13 Plaza, November 12, 2005. He should be granted
14 parole. He said that you should be granted
15 parole and of course you have become a positive
16 role model for everyone. He said that you will
17 always have a home here with his wife and
18 children, and I also plan on supporting him
19 financially with whatever it takes to help you
20 get on your feet.

21 INMATE PLAZA: Correct.

22 DEPUTY COMMISSIONER MEJIA:

23 (Indiscernible) Ministry (indiscernible) these
24 are your aunts and uncles --

25 INMATE PLAZA: Yes.

26 DEPUTY COMMISSIONER MEJIA: Yolanda Plaza
27 and Arto (Phonetic) Plaza. He's a Pastor in a

1 church?

2 INMATE PLAZA: Yes, he is.

3 DEPUTY COMMISSIONER MEJIA: They will
4 provide you counseling, and will be able to
5 provide you mentors and he's also owner of a
6 construction business and would be services --
7 if he needs employment -- if you need employment
8 he will be able to give you employment.

9 INMATE PLAZA: He's also offering me to
10 stay in his home. He gave me -- it's actually
11 in this other packet -- has his phone number,
12 cell number, anything you might need to ask him
13 any further questions.

14 DEPUTY COMMISSIONER MEJIA: Helen Plaza
15 is your mother?

16 INMATE PLAZA: Yes.

17 DEPUTY COMMISSIONER MEJIA: And I have a
18 support letter here, asking that you should be
19 -- asking for your release. She also said that
20 you'll have a house to come home -- when you
21 come home. Rachel Plaza, I think is your
22 sister?

23 INMATE PLAZA: Yes, correct.

24 DEPUTY COMMISSIONER MEJIA:

25 (Indiscernible) you have her total support,
26 either financially -- financial support.
27 Christina Plaza, this is your daughter.

1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: Asking that.

3 -- how old is she?

4 INMATE PLAZA: She is 19.

5 DEPUTY COMMISSIONER MEJIA: Oh. You have
6 -- she indicates that you have supported her by
7 teaching (indiscernible) classes. Thinks you
8 should be -- she's going to college. She's
9 looking for work to help (indiscernible) you,
10 any way possible. And we have Guadalupe Plaza,
11 your wife?

12 INMATE PLAZA: Yes.

13 DEPUTY COMMISSIONER MEJIA: Another
14 support letter. She says I will support him in
15 ever way that he needed for him to meet his
16 parole conditions. Isaiah Plaza, your son?

17 INMATE PLAZA: Yes.

18 DEPUTY COMMISSIONER MEJIA: He -- how old
19 is he?

20 INMATE PLAZA: He's ten.

21 DEPUTY COMMISSIONER MEJIA: Ten. And
22 there's another one, Ramona Plaza, your -- your
23 daughter, too?

24 INMATE PLAZA: That's correct.

25 DEPUTY COMMISSIONER MEJIA: Letter of
26 support. Annette Gizmalla (phonetic). That's
27 your sister?

1 INMATE PLAZA: Yes.

2 DEPUTY COMMISSIONER MEJIA: Another
3 letter of support. She says she owns her own
4 and will provide a place for you to live, help
5 you financially and help you enter your programs
6 with counseling to help you deal with everyday
7 life's events for as long as it takes. And
8 Alicia Desente Islanded (phonetic), who is this?
9 Oh, this is -- this looks like it's a different
10 one. Who's Juan Jose (indiscernible)?

11 INMATE PLAZA: Excuse me.

12 ATTORNEY RUTLEDGE: One from Mexico?

13 DEPUTY COMMISSIONER MEJIA: You have -- I
14 couldn't read this. 9805 Jessie Plaza, okay,
15 H12371 that's you. And, for M. Espinoza -- this
16 is a friend?

17 INMATE PLAZA: Yes, it is.

18 DEPUTY COMMISSIONER MEJIA: Okay. It's
19 another letter of support. And, Chaplain
20 (indiscernible) Lindsey -- this is the Chaplain
21 here in the prison --

22 INMATE PLAZA: Yes, it is.

23 DEPUTY COMMISSIONER MEJIA: Okay. Letter
24 of support and he said that you have been an
25 outstanding gentleman since his observation of
26 you since 1998. He was appointed Music Deacon
27 in 2003. You a musician? You play music?

1 INMATE PLAZA: No. No. I just direct
2 the choir.

3 DEPUTY COMMISSIONER MEJIA: Oh. He said
4 that you have -- he has seen phenomenal changes
5 in your life during these years and he's a
6 wonderful role model, conscious of people's
7 needs, feelings and (indiscernible). He's truly
8 an asset to our religious program here at CTF.
9 And he highly recommends consideration of the
10 Board of Prison Terms and this gentleman has --
11 he feels that you will be an outstanding asset
12 in the community. Nabia Anegias (phonetic),
13 cousin?

14 INMATE PLAZA: Say the name again?

15 ATTORNEY RUTLEDGE: Yeah, it's his
16 cousin, Nadia Anegus (phonetic).

17 DEPUTY COMMISSIONER MEJIA: Nadia Anegus,
18 another support letter.

19 ATTORNEY RUTLEDGE: Oh, well, you know
20 what -- it's from the Juan (indiscernible)
21 files. Poor Juan Reevus, (indiscernible) find
22 these letters.

23 DEPUTY COMMISSIONER MEJIA: Okay, Jessie
24 Plaza and that this is from an (indiscernible)
25 from Glenbrook, Philadelphia?

26 INMATE PLAZA: Yes. That's actually --
27 that's my sister --

1 DEPUTY COMMISSIONER MEJIA: Your sister?

2 INMATE PLAZA: Yes. She married -- her
3 name changed to Guerum (phonetic) but --

4 DEPUTY COMMISSIONER MEJIA: She said that
5 she will continue to support you after release
6 until you get back on your feet. She also
7 offers her home.

8 INMATE PLAZA: Yeah.

9 DEPUTY COMMISSIONER MEJIA: Guadalupe
10 Plaza, that's your wife. You said 2000 -- I
11 don't know what year was this one, but I read
12 (indiscernible) I know she's going to support
13 you. January 7th, 2005, Jesus Plaza -- your
14 father. Right?

15 INMATE PLAZA: Yes, that's correct.

16 DEPUTY COMMISSIONER MEJIA: Okay. Ramona
17 Plaza --

18 INMATE PLAZA: My daughter.

19 DEPUTY COMMISSIONER MEJIA: Your
20 daughter. Isaiah Plaza -- I read that.

21 PRESIDING COMMISSIONER BIGGERS: Some of
22 them are duplicates, some are from 2005 and some
23 are 2006.

24 DEPUTY COMMISSIONER MEJIA: Anything else
25 (indiscernible)?

26 ATTORNEY RUTLEDGE: I think you've
27 covered every letter and more and even those

1 that didn't belong to us. So, thank you.

2 DEPUTY COMMISSIONER MEJIA: And let me
3 turn this back to the Commissioner.

4 PRESIDING COMMISSIONER BIGGERS: Okay,
5 thank you. I just have one question there. I
6 see that you want to parole to your brother.
7 Why aren't you paroling back to your wife?

8 INMATE PLAZA: Oh, yes, my wife moved in
9 with her sister two years ago. Her mother'd
10 been fighting cancer. Unfortunately her mother
11 passed away November of last year, and currently
12 she's still living with her sister. But upon my
13 release, hopefully within the next, you know,
14 within three to six months, between the both of
15 us we'll have the money to put a first and last
16 down payment, you know, that you need for your
17 -- our own place so that we can live together.
18 But currently she's with her sister.

19 PRESIDING COMMISSIONER BIGGERS: Did I
20 miss anything -- talking about the, what little
21 we could talk about the crime --

22 ATTORNEY RUTLEDGE: You know, I meant to
23 point out to you -- it's up to your discretion.
24 He did provide a version in the Board Report.

25 PRESIDING COMMISSIONER BIGGERS: Yeah, I
26 saw that.

27 ATTORNEY RUTLEDGE: Other than that,

1 except for Closing Statement, we have nothing
2 else to --

3 PRESIDING COMMISSIONER BIGGERS: To talk
4 about -- okay. At this point then I'm gonna ask
5 the District Attorney if he has any questions
6 for the -- Mr. Plaza.

7 DEPUTY DISTRICT ATTORNEY MORRISON: Okay.

8 Did I hear the inmate say that he accepted
9 responsibility for the crime an hour into the
10 law enforcement interview?

11 INMATE PLAZA: Correct.

12 PRESIDING COMMISSIONER BIGGERS: Please
13 direct your answers to (indiscernible).

14 DEPUTY DISTRICT ATTORNEY MORRISON: Just
15 a moment, please. So at the time of his trial,
16 the inmate accepted full responsibility for the
17 crime.

18 INMATE PLAZA: Correct.

19 DEPUTY DISTRICT ATTORNEY MORRISON: Thank
20 you. I have no further questions. Oh, wait a
21 minute. Does the inmate know what the matrix
22 for this crime is?

23 INMATE PLAZA: I believe it's 27, 28
24 years.

25 DEPUTY DISTRICT ATTORNEY MORRISON: Thank
26 you. Nothing further.

27 PRESIDING COMMISSIONER BIGGERS: Okay,

1 thank you, sir. Ms. Rutledge.

2 ATTORNEY RUTLEDGE: Thank you. In
3 looking through some of your information I came
4 across a letter that's -- I wanted to ask you
5 about this letter. It's addressed to all family
6 members, loved ones, and friends of Patrick
7 Littlebull. You made an attempt to submit an
8 apology letter to his family or to the District
9 Attorney?

10 INMATE PLAZA: I mailed that to the
11 address indicated on the (indiscernible).

12 ATTORNEY RUTLEDGE: All right. And what
13 was -- I didn't see the -- what was the address?

14 INMATE PLAZA: Is it not on the
15 letterhead of the --

16 ATTORNEY RUTLEDGE: Oh, the
17 Correspondence Division in Sacramento.

18 INMATE PLAZA: Yes. Sacramento, yes.

19 ATTORNEY RUTLEDGE: Okay, and that was
20 dated June 15th, 2004. It -- I'll go ahead and
21 leave it if the Board wishes to review it, but I
22 think you wrote it on the prompting of Impact?

23 INMATE PLAZA: Yes, correct.

24 ATTORNEY RUTLEDGE: Anyway, I just wanted
25 to note that this letter -- he had written a
26 letter to the family, and what did you learn in
27 Impact?

1 INMATE PLAZA: Do you want to be
2 specific, or do you want me to tell you
3 everything that I learned in Impact?

4 ATTORNEY RUTLEDGE: Well, what changed
5 your life about Impact?

6 INMATE PLAZA: I'd have to say the thing
7 that was a drastic blow to me more than anything
8 was there was an individual by the name of Angie
9 Torres, her son was killed in a drive-by here in
10 Salinas and I had the opportunity to sit down
11 with her and discuss with her some of the
12 specifics of my crime and in sharing with her --
13 she had not shared with me but I shared with
14 her, and upon finishing my, you know, my talk
15 with her I introduced her -- I am a facilitator
16 of Impact -- I introduced her and I went and sat
17 down with the audience in the pews and then she
18 had her opportunity to get up and give a
19 presentation, and when she gave the presentation
20 the similarities of what happened to her son was
21 just -- it was eerie because they were just so
22 close, and afterwards we had the opportunity to
23 talk and she told me, you know, that -- she
24 said, yeah you don't know what you did when you
25 were talking to me. She says, you know, and you
26 didn't even know my story and the same for me.
27 I didn't know her story, but yet I shared with

1 her, and then upon learning her story it just --
2 it blew me away because I just realized what it
3 must have felt like to be on the other side.
4 Because in Impact that's one of the things that
5 we teach. We teach victim awareness. We teach,
6 you know, so many people are used to being on
7 the side of the crime -- on the side of, you
8 know, being the wrong one, and they never know
9 what it's like to be on the other side. Most
10 guys come out of that program with a totally
11 different vision of crime. A lot of them come
12 out and they say, wow, I never knew that I had
13 that impact on my victims. So it -- it really
14 -- it had -- it gave me a greater view, you
15 know. It wasn't just that focus on one person
16 or one individual. It opened my understanding
17 of how many -- how great an effect it had.

18 ATTORNEY RUTLEDGE: What about the people
19 in this room? Do you think this offense affects
20 us?

21 INMATE PLAZA: Oh, definitely,
22 definitely. I believe it does because -- again,
23 speaking on the ripple effect, not only did it
24 effect him, his family, his friends or his loved
25 ones, but it effected society and I realize that
26 it all trickles down and what happens is taxes,
27 money, time spent, you know, it all, you know,

1 it's a ripple effect that never reaches the
2 banks of the water.

3 ATTORNEY RUTLEDGE: All right. And,
4 there's a statement in the Probation Report
5 that's pretty negative about you. I mean,
6 you're in a car with gang-bangers and someone is
7 shot and killed and left to die on the street.
8 How do you go from that to the person that you
9 are today? What happened?

10 INMATE PLAZA: I would have to say even
11 though I chose that -- to hang around with them
12 type of people, you know, chose to be around
13 that lifestyle, in all honesty I never expected
14 to end up in prison and upon --

15 ATTORNEY RUTLEDGE: (Indiscernible).

16 INMATE PLAZA: -- honestly I didn't. But
17 upon me actually making it to prison due to bad
18 choices, it was just a slap in the face, you
19 know. It was just reality and when it hit me I
20 realized that, you know, everything that I had
21 been doing, you know, reality was what I got,
22 you know, being in prison and it wasn't
23 something that -- it just didn't sit right with
24 me, and I knew that this wasn't me, you know. I
25 didn't -- I didn't want to -- I didn't want to
26 be in prison or be one of them persons that go
27 in and out of prison, so it was a -- it was a,

1 you know, it was a rude awakening.

2 ATTORNEY RUTLEDGE: No further questions.

3 PRESIDING COMMISSIONER BIGGERS: Okay.

4 Thank you. At this point I'm going to ask Mr.
5 Morrison for his closing.

6 DEPUTY DISTRICT ATTORNEY MORRISON: The
7 District Attorney opposes parole for this
8 outrageous heinous and premeditated, vicious
9 gang attack. The inmate aided and abetted by
10 driving his vehicle over to the location of the
11 murder, parking it without its lights in what
12 the Appellate opinion described as almost lying
13 a wait attack. And Mr. Littlejohn (sic) a rival
14 gang member was shot and killed. He was not the
15 only victim. The Bell Garden's Police Report
16 which had been submitted along with the
17 Sheriff's Homicide Report note that the
18 supplemental report Officer Winfrey,
19 W-I-N-F-R-E-Y, Bell Garden PD was staffed to the
20 home of witness Collins who found a hole in his
21 south kitchen window and an adjacent hole in the
22 wallboard next to the window. The officer
23 observed a hole, approximately one inch in
24 diameter, in the lower portion of the south
25 kitchen window. Glass fragments were present on
26 the interior window sill. Another little hole
27 was present in the interior vertical portion of

1 the inside of the window frame, and the reason
2 this is significant is because the inmate with
3 his gang mentalities and his crime partner
4 sprayed bullets in a residential neighborhood.
5 One was recovered from victim Littlejohn which
6 was matched to the murder weapon which was found
7 secreted in the inmate's car. The witnesses
8 which described in the reports, noted numerous
9 shots being fired and any one of those bullets
10 could have gone through the house like it did
11 Mr. Collins home and killed another innocent
12 person in their home, minding their own
13 business. This is the kind of gang that's
14 plagued Los Angeles and all communities around
15 the state and country, senseless gang violence.
16 The motive was a retaliatory shooting because
17 the Bell Garden Locos had fired on King Cobra
18 earlier that night. The inmate should be
19 commended; he's programmed well. Not many
20 people come this long without a 115. He is on
21 the way to turn his life around, as evidenced by
22 his programming. However, the inmate still I
23 don't believe has come to grips with the crime
24 because he's still not candid with the Board.

25 ATTORNEY RUTLEDGE: Objection.

26 PRESIDING COMMISSIONER BIGGERS:

27 (Indiscernible) statement. Please continue.

1 DEPUTY DISTRICT ATTORNEY MORRISON: The
2 inmate said he took responsibility into the
3 Sheriff's interview, and this was documented at
4 length in the Appellate Opinion as well as the
5 statements contained in the police report. This
6 is in the Appellate Opinion, Page Four and Five,
7 which has not been read into the record yet.

8 "Deputy Sheriff Woods Danoff, D-A-N-O-F-F,
9 interviewed appellant on May 27th, 1990."

10 ATTORNEY RUTLEDGE: We would object to
11 the reading of the police report, just because
12 it's submitted there's still not adequate
13 foundation for it to be read into the record.

14 DEPUTY DISTRICT ATTORNEY MORRISON: This
15 is the Appellate Opinion summarizing the
16 evidence at trial.

17 ATTORNEY RUTLEDGE: I'm sorry, I thought
18 you said a Sheriff's Report.

19 PRESIDING COMMISSIONER BIGGERS: Go
20 (indiscernible).

21 DEPUTY DISTRICT ATTORNEY MORRISON: Page
22 Four in the Appellate Opinion, Deputy Sheriff
23 Woods Danoff, who is one of the two LA SD
24 homicide investigators in the case who
25 interviewed the inmate.

26 "He interviewed appellant inmate
27 on May 27th, 1990. Appellant at

1 first denied any knowledge of the
2 shooting, maintaining he had been
3 at a party at the time of the
4 shooting. After being informed
5 that his car had been identified
6 as being used in the homicide and
7 that the gun had been recovered
8 from the car, appellant admitted
9 that he drove the car that was
10 used in the shooting -- "

11 DEPUTY COMMISSIONER MEJIA: Excuse me --
12 PRESIDING COMMISSIONER BIGGERS:

13 Continue, Sir.

14 DEPUTY DISTRICT ATTORNEY MORRISON: I'll
15 repeat the last sentence, since it was --
16 "After being informed that his car
17 had been identified as being used
18 in the homicide and that the gun
19 had been recovered from the car,
20 appellant admitted that he drove
21 the car that was used in the
22 shooting and (indiscernible)
23 supplied the weapon and the car.
24 Appellant claimed that the shooter
25 was named someone -- someone named
26 Oso, O-S-O, and that he neither
27 slowed the car down nor stopped

1 the car and never turned off his
2 headlights. He claimed Oso later
3 left the car and that he later
4 picked up Silva and was giving him
5 a ride to Silva's sister's house
6 when they were stopped and
7 arrested."

8 Now, the inmate apparently is saying that's when
9 he accepted responsibility. I asked the inmate
10 specifically if he had accepted responsibility
11 in the testimony at his trial, and that is not.
12 correct according to the Appellate report
13 summary of the inmate's testimony. The inmate's
14 testimony, under oath, at trial was a denial.
15 The Appellate Report continues on the same page.

16 "Appellant testified he gave a
17 ride to a man named Oso who was
18 seeking to purchase cocaine. Oso
19 told the appellant that he could
20 not use his own car because it was
21 hot. While looking for the
22 cocaine to sell, the appellant saw
23 seven to ten men running at his
24 car. The appellant accelerated
25 and hear Oso shout punks at the
26 men. Oso then pulled out a
27 revolver and fired. Appellant

1 drove away. Appellant did not
2 know that Oso had a gun until he
3 fired it. His car lights were not
4 turned off, and he slowed down
5 only for the purpose of finding
6 the cocaine dealer. Oso tried to
7 hand appellant the revolver after
8 he fired it, but appellant pushed
9 it away and it fell into the part
10 of the car where the radio was
11 missing. Appellant refused to
12 disclose the identity of Oso
13 saying he would be killed if he
14 did."

15 I submit that that is not accepting
16 responsibility for being the aider and abeter,
17 driving a fellow gang member over to the
18 location, parking with your lights out in what
19 the Appellate Court labeled almost lying in
20 wait, and allowing your crime partner to go up
21 and shoot a rival gang member motive being gang
22 retaliation, and as I had said spraying bullets
23 all around: The defendant's testimony at trial
24 was a rejection of responsibility, a denial of a
25 commission of the file, and is absolutely not
26 what he told the Panel today that he accepted
27 responsibility in the trial. He's basically

1 says, oh, I gave some dude a ride to go buy some
2 coke and then all of a sudden he pulls out a gun
3 and starts shooting somebody. I had no idea.

4 That is not responsibility. The inmate was
5 attempting to be exonerated of the crime. The
6 Appellate Report Opinion goes into great length,
7 and I won't read it all, but on Page Six it
8 describes all the evidence testified by other
9 witnesses supporting of pre-meditated murder.

10 "The appellant's driving slowly
11 with his lights off, thus
12 eliminating attention to his
13 approaching car is strong evidence
14 of prior planning. The approach
15 without lights is factually
16 similar to lying in wait and
17 illustrates a deliberate plan by
18 the occupants of the car to
19 approach to victim unnoticed so
20 that the killing could be
21 accomplished from a position of
22 surprise and advantage. The
23 relationship between appellant and
24 the victim, each belonging to
25 rival gangs between which there
26 was bad blood provided evidence of
27 the appellant's motive for the

1 shooting. The manner of the
2 shooting, one person shooting and
3 another driving so as to
4 facilitate an easy and rapid
5 escape especially when coupled
6 with appellant's slow approach to
7 the scene with his lights off
8 reflects that the killing resulted
9 from a pre-conceived desire."

10 This is about as callous, cold-blooded and
11 calculated murder as you can have. The only
12 thing was the appellant apparently did not pull
13 the trigger. But he did everything short of
14 that. The psych report in 1994, said well he
15 didn't really want to go into the details of it
16 because it was still on appeal. Current psych
17 report just glosses over the apparent lack of
18 insight and says because of his good behavior he
19 is a low risk. I submit that until he
20 demonstrates more credibility with the Panel and
21 more insight into his actual role and
22 participation, he has not taken responsibility
23 for it and therefore his statements of remorse
24 and the psych report are not actually supportive
25 because they really didn't delve into it. The
26 fact that he hadn't been caught in other crimes,
27 had a minimal criminal record is commendable.

1 It's not really an escalating pattern of
2 violence. He did have summary probation, but
3 the inmate told the psychologist in 1994, which
4 was also kind of troubling, that he had the
5 mentality of a 15 year old. He indicated that
6 this tragic event, being convicted of murder,
7 was a quote "wake up call" --

8 ATTORNEY RUTLEDGE: Objection. It
9 doesn't say being convicted of murder.

10 PRESIDING COMMISSIONER BIGGERS: What
11 page are you on, sir?

12 DEPUTY DISTRICT ATTORNEY MORRISON: I
13 just -- it doesn't. I am commenting on his
14 psych report. He's -- the inmate indicated --

15 PRESIDING COMMISSIONER BIGGERS: Just a
16 second, sir. Okay. Let's keep this civil and
17 it's not written -- are you reading directly
18 from the psychologist's report?

19 DEPUTY DISTRICT ATTORNEY MORRISON: I
20 read it and then I made a parenthetical comment.

21 PRESIDING COMMISSIONER BIGGERS: Okay.
22 Then perhaps you should paraphrase it saying
23 your opinion. Continue.

24 DEPUTY COMMISSIONER MEJIA: What is
25 interesting is talking about that the immature
26 behavior at the time -- that's on Page One of
27 the report; and he stated I had the mentality of

1 a 15 year old. The official version read
2 described a juvenile man. The inmate was 25 at
3 the time of his crime. This is not a youthful
4 offender, unsophisticated (indiscernible). This
5 isn't a 15 or 16 year old gang banger. This is
6 a 25 year old out on a mission of revenge.

7 ATTORNEY RUTLEDGE: Objection. Mission
8 of revenge? Where's that from? You're supposed
9 to -- excuse me. I just want to note that the
10 DA's supposed to -- your comments are supposed
11 to be supported by documentation.

12 PRESIDING COMMISSIONER BIGGERS:
13 (Indiscernible).

14 DEPUTY COMMISSIONER MEJIA: The Appellate
15 Decision -- talking about a retaliatory gang
16 opinion -- member for a --

17 PRESIDING COMMISSIONER BIGGERS: Let's --
18 let's -- okay. Let's -- whenever --

19 DEPUTY DISTRICT ATTORNEY MORRISON: this
20 is within the range of proper comment.

21 PRESIDING COMMISSIONER BIGGERS: Then Mr.
22 Morrison, if we're gonna speculate I think we
23 need to make sure that we say and we make
24 (indiscernible) in your opinion or -- I don't
25 think that we should speculate on something of
26 this nature.

27 DEPUTY DISTRICT ATTORNEY MORRISON:

1 Commissioner, excuse me, but I'm permitted to
2 make public comment. I'm not asking you to
3 speculate. The Appellate Decision describes --

4 PRESIDING COMMISSIONER BIGGERS: I
5 understand --

6 DEPUTY DISTRICT ATTORNEY MORRISON: --
7 any motivation --

8 PRESIDING COMMISSIONER BIGGERS: I
9 understand that.

10 ATTORNEY RUTLEDGE: From another --

11 DEPUTY DISTRICT ATTORNEY MORRISON: There
12 was a rival shooting. There was a rival
13 shooting --

14 PRESIDING COMMISSIONER BIGGERS: I
15 understand that.

16 DEPUTY DISTRICT ATTORNEY MORRISON: Now,
17 if the gang goes out to retaliate --

18 PRESIDING COMMISSIONER BIGGERS: Then
19 that's the way you should phrase it -- that
20 based on --

21 DEPUTY DISTRICT ATTORNEY MORRISON: That
22 is what gang members refer to as getting
23 revenge.

24 PRESIDING COMMISSIONER BIGGERS: I
25 understand that, sir.

26 DEPUTY DISTRICT ATTORNEY MORRISON: And
27 my comment is that he was out on a mission of

1 revenge that resulted in the death and a shot up
2 neighborhood. And therefore, a particularly
3 egregious crime under Dannenberg, as the Chair
4 noted the case the inmate submitted, and he is
5 unsuitable for parole and we ask for a three
6 year denial. Thank you.

7 DEPUTY COMMISSIONER MEJIA: Let's --
8 before you do your -- let me just put on the
9 record that he does have the completion
10 paperwork, because it was very confusing -- you
11 had to really look at it. He did have Air
12 Conditioning completion in October 1997. It's
13 just confusing. It doesn't say he completed it.
14 It says his assignment (indiscernible) and Mr.
15 Plaza has completed 15 certification units, 100%
16 of the class. Maybe that how we --

17 INMATE PLAZA: A hundred percent of what?

18 DEPUTY COMMISSIONER MEJIA: Of the class.
19 I don't know what it means, sir, but it does say
20 that he has completed -- units completed. This
21 is the Education Progress Report. Normally they
22 put here completed completion, but it just say
23 completed some of the curriculum -- that's when
24 he was a Clerk. And then when he became a
25 student he completed 15 certification units,
26 100% of the class. So I would say that is
27 completion.

1 PRESIDING COMMISSIONER BIGGERS: All
2 right thank you.

3 DEPUTY COMMISSIONER MEJIA: And then
4 another one is October 28, 2000 -- October 28th
5 -- April 28th, 1995, he completed his Vocational
6 Dry Cleaning. Another confusing chrono here.
7 We may have to look at it again. A handwritten
8 (indiscernible) Teacher's Aide and
9 (indiscernible) he was a key person assisting in
10 (indiscernible) Dry Cleaning program, all areas
11 in training and development of other students.
12 He has learned all aspects of this Dry Cleaning
13 business. And it's noted here, reason for the
14 termination, his job change -- Job change
15 completed. So which means I would say
16 (indiscernible) in 1994, (indiscernible) 1995 he
17 has completed the Dry Cleaning business.

18 PRESIDING COMMISSIONER BIGGERS: So
19 basically you're saying the chrono's in support
20 of completion; just don't have the --

21 DEPUTY COMMISSIONER MEJIA: Yeah, the
22 actual completions.

23 PRESIDING COMMISSIONER BIGGERS: The
24 actual completions. Ms. Rutledge, closing
25 please.

26 ATTORNEY RUTLEDGE: Thank you for
27 verifying that for us, Commissioner. While I'd

1 like to go off of the suitability factors, I
2 think that's most appropriate. We're here today
3 because we -- well you know why we're here, the
4 legislature sets an open term for a crime such
5 as this and -- meaning that there is a belief
6 that persons committed for first-degree murder
7 may at some point become suitable members of
8 society, people who have paid their debt to
9 society, bettered themselves, and we can all
10 feel reasonably safe that they're out among us.
11 Had this commitment offense been of the -- had
12 it been truly lying in wait -- which is a
13 special circumstance of first-degree murder
14 punishable by death, we may not be sitting here
15 today. The commitment offense itself, my client
16 has taken responsibility for it. What was said,
17 his testimony to the Court, matches what he has
18 said in earlier reports. And, under Dannenberg,
19 specifically Dannenberg, I think is supportive
20 of when you have to -- and I know you have to
21 weigh the commitment offense but weighing that
22 in, Dannenberg says if it doesn't take more than
23 it was necessary to complete the murder. This
24 victim was shot and died within minutes.
25 There's no evidence of mutilation, there's no --
26 there were no other targeted victims. We found
27 a bullet -- but we don't even know if anybody

1 was home. There's no evidence that there were
2 other people that were actually at harm at the
3 time of the shooting. In moving on to my
4 client's remorse for this offense. He has --
5 he's expressed today his remorse for this crime,
6 but I think more importantly his determination
7 to turn himself around. Had he been such a hard
8 core gang member, he'd never had made it this
9 far. We know that. We know how it is to enter
10 a prison on a Level IV and what it takes to
11 survive. And it takes a lot of determination.
12 It takes somebody who truly does realize that,
13 you know, there's a better way to live. And, I
14 think to his, you know -- the prison Chaplain
15 (indiscernible) he doesn't write letters for
16 very many inmates. This is the first one I've
17 seen. And he wrote something really important
18 because I think -- I think this really says it
19 all about my client as far as remorse would go,
20 I think that that I would speculate and submit
21 that that's -- he could be programming doing
22 everything he's supposed to do and not go to
23 church. There's got to be some -- I would
24 submit or speculate that perhaps he's got some
25 insight and a conscience to where he feels the
26 need to associate with the church. And, there
27 was a paragraph that wasn't read during the

1 letters that I just wanted to say and it was
2 written by Chaplain Lindsay. And it says,

3 "People often ask me what kind of
4 results I see in my work here in
5 the prison. I will hold up one
6 hand showing the number five, and
7 they will say those odds aren't
8 very good since there are more
9 than 7,000 plus inmates in your
10 facility. To which I'll reply,
11 you're right, except I look at it
12 as mining for diamonds and when
13 you find one you have some -- when
14 you find one you have something of
15 value."

16 Well, inmate Plaza is one of those diamonds.
17 You know, I'm not going to sit her and
18 regurgitate all of his accomplishments and the
19 binder he provided to the Board -- we've gone
20 over them. In every area of programming he's
21 met -- he's met self-help, he admits his
22 substance abuse, he's been treating that
23 substance abuse, he's done Impact, he's done
24 Anger Management, he's participating in sports,
25 he has an excellent job record. He's actually
26 got a chrono from his supervisor in Culinary
27 who's recommending him for a job, I mean,

1 anticipating that an employer on the outside
2 where the public has access to the restaurant.
3 that he's going to present that in a public
4 place and ask for employment. He has, you know,
5 taken other health courses and has not had a 115
6 or anything in 15 years, which is extremely
7 commendable. And again, that more expresses, I
8 think, his insight in to literally reversing his
9 life. He said he was leading an irresponsible
10 life at that time; however he did work and
11 support his wife and children. Did you have one
12 child at that time or --

13 INMATE PLAZA: Two.

14 ATTORNEY RUTLEDGE: He had two that he
15 supported. So he did -- it was like he said, he
16 was kind of a -- he was a dysfunctional person
17 over all, but able to maintain a job and take
18 care of his family which indicates that there
19 are pro social qualities in this man. He's not
20 just some thug out there, you know, blowing
21 people away. He has a very stable social
22 history as far as being with his family, being
23 married. He's still married to the same woman;
24 still has three children. Appreciates the
25 impetus he put on her when he entered the
26 institution and forced her into being a single
27 parent. He's got letters from his children that

1 he's attempting to father from prison, cousins,
2 other assortment of persons, and also he has at
3 least two job offers. One from Mr. Rentaria
4 (phonetic) and then one from his previous
5 employer -- was it --

6 INMATE PLAZA: Yes.

7 ATTORNEY RUTLEDGE: -- where he worked.
8 He had a good job record there before he entered
9 the institution. And aside from all the great
10 things he's done which I think all point to
11 suitability and the fact that he has expressed
12 his remorse and does, by his actions not just
13 his comments, have insight into how much trouble
14 he created with this offense and saw what he
15 needed to do to turn it around. But I think we
16 do -- I think oftentimes in these types of cases
17 there's the white elephant in the room, which is
18 time. This is his first hearing and it's almost
19 a given that nobody gets paroled their first
20 hearing. I think the jargon is always he needs
21 to maintain his gains or you point to the
22 commitment offense, but I think that the
23 suitability --

24 DEPUTY COMMISSIONER MEJIA: -- hold it.

25 [Thereupon the tape was changed to Tape Two.]

26 DEPUTY COMMISSIONER MEJIA: Okay, go
27 ahead, continue. Second side, second set of

1 tapes for Mr. Plaza.

2 ATTORNEY RUTLEDGE: I do believe that
3 this man meets every single suitability factor.
4 He has completed his programming -- I mean, he
5 remains active in his programming and he's done
6 all those things necessary to show us that he's
7 serious about release and I think the only
8 question that would linger would be time,
9 because often we don't see people paroled by
10 their first hearing but I would say this man is
11 one of the few cases that we see where he's
12 suitable at his first hearing. He's suitable.
13 He's prepared to enter the outside. He's got a
14 plan and the information he submitted to the
15 Board wherein he's going to -- exactly what he's
16 going to do when he walks out the doors. I
17 would just ask this Board -- I know it's a
18 difficult job for you and I know you've gotta
19 consider the person paying their debt to society
20 because that's part of our justice system, but I
21 would ask you to -- to give this man a different
22 look as somebody who is suitable, who has served
23 enough years according to what the Legislature
24 said and please grant him a parole date, or if
25 you find him suitable set a term for him today.
26 Thank you.

27 PRESIDING COMMISSIONER BIGGERS: Thank

1 you, very much, Ms. Rutledge. Now Mr. Plaza you
2 have the opportunity to tell this Panel why you
3 feel that you are suitable for parole.

4 INMATE PLAZA: Sorry. A little nervous.
5 I believe first of all if I could I'd like to --
6 I'd like to explain a couple of things. One
7 thing that I have heard a lot of times being
8 incarcerated that I didn't know 16 years ago --
9 I had no knowledge of what personal disorders
10 were because I was so caught up in my drug and
11 alcohol habit. I didn't look at -- I didn't
12 look at things as I should have, not normally
13 anyways. I realize that being anti social at
14 the time, you know, had me do things that any
15 normal person would not do. It wasn't due --
16 I'm not making excuses. I never say that, you
17 know, some people do -- but I don't say that the
18 drugs or the alcohol committed the crime. I
19 understand that I was the one that made the
20 choice, and I take full responsibility for that.
21 But I do -- I also want to say that being anti
22 social, you know, my problems started at about
23 15 years old, basically. Fifteen years old, I
24 hit high school started hanging out with the
25 wrong crowd. Running with the guys, you know,
26 that I shouldn't have -- had no business hanging
27 around. But because they all were in the same

1 predicament, whether they were raised by a
2 single parent or, you know, were also seeking
3 some kind of, you know, some kind of family.
4 Some kind of acceptance. And, being that I was
5 in that same category looking for acceptance,
6 like I said earlier, I chose to hang around with
7 people that had a lot of similarities to me.
8 And because I chose to hang around with those
9 people I was around things that, you know, I
10 shouldn't have been around and drugs and alcohol
11 became my biggest problem. And I understand
12 that, you know, again a personal disorder border
13 line, I crossed a lot of border lines but laws
14 specifically because by purchasing drugs and
15 alcohol I was naturally breaking laws, you know,
16 to purchase these products. Again, you know,
17 narcissistic because I hung around with this
18 group I kind of got the feeling that I was, you
19 know, I should have respect or I should have
20 things coming just because of who I was or who I
21 hung around with. But upon coming to prison I
22 can honestly say that the very first thing that
23 helped me out was being incarcerated, of course,
24 but going to AA. When I first went to AA I
25 started realizing when I got to Step Four
26 especially because you have to take that moral
27 inventory, I started realizing and seeing

1 things. And the sponsor at that time he taught
2 us to look at things and to -- and to just, you
3 know, call them what they are. If you're lying,
4 then you're a liar. If you're stealing, then
5 you're a thief. If you're doing -- whatever the
6 circumstances might be. And so I did that, and
7 I started looking at things and, you know, to be
8 honest initially it was ugly and I -- some
9 things you know you kinda don't want to accept
10 because you want to think that, you know, you're
11 not like that or you're better than that. I
12 never wanted to accept to that, you know, that I
13 had these problems, you know, because I thought,
14 you know, hey I'm normal. There's nothing
15 different about me than the next guy. But upon
16 learning these things I started working on
17 making that change, changing my life. AA led me
18 to church. When I started going to church again
19 that was a big help because the church started
20 helping me again look at myself, and get an
21 understanding. And, once I started to get that
22 understanding I really began to make more
23 change. And, as time went on -- I mean, I
24 always got something out of the self-help
25 groups. Every group had at least something to
26 offer but as I went along I started learning, I
27 started getting the insight of my crime of

1 myself and I started realizing as well the
2 severity of my crime, you know, that it wasn't
3 just, you know, something that happened, you
4 know. It was way deeper than that. So, I
5 started looking into these things. Upon looking
6 into these things and really getting that
7 understanding, Impact -- like I said earlier,
8 the Impact was a great help to me. I started
9 learning different things from Impact as well.
10 Started getting a different perspective and
11 getting more of a panoramic vision on life, you
12 know, on everything that I'm involved in. What
13 I do. It was a Captain who -- Captain Gega
14 (phonetic), Unit Three Captain, she was the one
15 who kind of, you know, gave me that opportunity
16 as well to get into doing more than just the
17 average guy that was in there. So, I started,
18 you know, working with her. Working with her
19 you see the problems in the paperwork. I was
20 able when that riot broke out in the wing
21 between the Nationals and the Bull Dogs, which
22 is two different groups that are here -- even
23 though I'm not a part of any of the groups I
24 have a rapport because now people see me and
25 they know that I'm the opposite of them. I'm
26 constantly talking to people, trying to
27 encourage them to be their own man, to make

1 their decisions, to not follow that peer
2 pressure and the crowd and do those things. And
3 so they -- they tell me, you know, they see
4 integrity in me, and it's something that you
5 don't see in just everybody or anybody. So
6 having that has helped me a lot. I believe that
7 through them programs -- you also -- there was
8 another letter in the packet. It was from
9 Victory Out Reach out of here in San Jose. They
10 have a program also. Not just here in San Jose.
11 They have it in every County. It doesn't
12 matter. I talked to Ed Morales who's the
13 Director there. He says it doesn't matter what
14 County you go to, they have a program that's
15 called Cease Fire and because of the education
16 and the insight that I've gotten through the
17 program he's told me, wherever you go, I want to
18 use you because you can get to these people.
19 You can reach out and talk to these people so
20 that there's never -- again there doesn't' have
21 to be another Mr. Littlebull. There doesn't
22 have to be somebody in my position, you know.
23 So that's what I look to do now, is to stop them
24 kind of things. Deter people, you know, doing
25 them kind of things. I know it's in the
26 Appellate version as well, even though no one
27 read it here today, but you know that upon my

1 reaching the County Jail, you know, I was
2 approached. Because, see, I was not -- I was
3 not an active member but I hung around with the
4 crowd. So I was approached in the County Jail
5 and, you know, was threatened. That was the
6 County Jail. Upon reaching prison -- and it
7 actually turned out to be one of the biggest
8 favors they could do for me. I was approached
9 in prison, and they told me, you're on your own.
10 You don't run with us. We don't claim you. You
11 don't claim us. Which was like I said, the
12 biggest favor they could have done for me at
13 that time. Because that was -- that was what
14 got me started as well to make that change and
15 not continue to try to pursue that road that I
16 was on prior to that point. So, being that I
17 was excommunicated -- it was good for me,
18 because then, even though they told me you're on
19 your own, and I know that in here not just
20 anybody can be out on their own. You usually
21 have to find a crowd or find a race or, you
22 know, someone. You usually gotta, you know,
23 hang out with somebody. But I was able to do
24 it. I was able to go on my own. And I started
25 to take the attitude too that, you know what,
26 I'm not gonna pay attention what other people
27 say. I don't care what, you know, what they say

1 or do because I want to be that person that I
2 know I can be. And even my own mother told me
3 that one time on visit six, seven years ago.
4 She said, you know, you've turned into that man
5 that I always wanted you to grow up to be, you
6 know, I understand that today I have an
7 opportunity to get out, come before you, and to
8 put all these things in practice. As my
9 attorney said, not just talk the talk but walk
10 the walk. And, I have things in place. I have
11 things, you know, set up where I can go and be a
12 part of society and I can go and make a
13 difference and hopefully like I said before get
14 at, you know, not just youngsters, anybody.
15 Whether they're young or old, and be able to
16 share with them and explain to them, you know,
17 educate them. You know, I'm all for
18 intervention. Intervention is good. But,
19 prevention is even better. You know,
20 intervention the problem's already there. But
21 prevention, the problems' not there yet or
22 hasn't got to that point where, you know, it's
23 too the extreme. So, I hope that today, you
24 know, the Panel would surely take a look and
25 consider me because I believe with the things
26 that I have, with all the support system that I
27 have, with the plans and the goals that I have

1 -- and it's not something that I did all my
2 life, but I do have plans and goals. And I
3 believe those plans and goals that I have now
4 are going to be the things that help me to
5 succeed, and I have no problem with any kind of
6 parole to the extreme conditions. Testing, you
7 know. Whatever I need to do. I have no problem
8 whatsoever. And so I -- I just ask if, you
9 know, you Panel members today would consider me
10 as being suitable and I thank you and I do want
11 also would like to say that this packet here was
12 not a personal attack on you. It was not meant
13 to be, you know, in any way personal. I do have
14 to say it's my first one and being unfamiliar I
15 did allow other people to kind of give me a
16 little helping hand, and if there was anything
17 that, you know, was not necessary or was an
18 overkill it was not done intentionally and once
19 my final statement because I want to make sure
20 that you know is that, again, I take full
21 responsibility for the taking of the life of Mr.
22 Littlebull and I thank you.

23 PRESIDING COMMISSIONER BIGGERS: We will
24 recess at this point.

25 R E C E S S

26 --ooor--

27

1 CALIFORNIA BOARD OF PAROLE HEARINGS

2 D E C I S I O N

3 DEPUTY COMMISSIONER MEJIA: We're back on
4 record for our decision -- on tape.

5 PRESIDING COMMISSIONER BIGGERS: Let the
6 record reflect that everyone that was in the
7 room prior to us recessing for deliberations are
8 now back in the room. The Panel has reviewed
9 all information received from the public and
10 relied on the following circumstances in
11 concluding the prisoner is not suitable for
12 parole and would pose an unreasonable risk of
13 danger to society or a threat to public safety
14 if released from prison. The offense was
15 carried out in an especially cruel and callous
16 manner in that this was a drive-by shooting
17 where a Mr. Patrick Littlebull, the victim, was
18 shot and killed as a retaliatory type crime.
19 based on what was in the Appellate Decision.
20 This offense was carried out in a calculated
21 manner, and I'll read from the -- that the --
22 decision that Mr. Plaza was

23 " -- driving slowly with his lights
24 out thus eliminating attention to
25 his approaching car was strong
26 evidence of prior planning. The

1 approach without lights is
2 factually similar to lying in
3 waiting and illustrates a
4 deliberate plan by the occupants
5 of the car to approach to victim
6 unnoticed so that the killing
7 could be accomplished from a
8 position of surprise and
9 advantage."

10 The motive for the crime was very trivial in
11 that it was a gang related shooting, and these
12 conclusions was drawn from the Statement of
13 Facts from the Appellate Decision. You have no
14 -- your criminal record was of no significance
15 to us because you had very little if any. You
16 have programmed extremely well. You should be
17 commended for no disciplinary actions. Your
18 psychiatric evaluation was favorable. Your
19 parole plans were favorable. Your 3042 response
20 from the District Attorney was opposed to your
21 -- a finding of parole suitability, and you have
22 numerous letters of support. The Panel
23 struggled with this for quite some time,
24 basically because of a couple things that I will
25 go over with you right now. First of all, the
26 signs of remorse for the victim. You say you

1 take full responsibility for the crime, but when
2 Deputy Commissioner Mejia started talking to you
3 about the crime and what you took from the
4 victim, you went off and you started talking
5 about collateral effects of the families and all
6 the others but you never mentioned about the
7 victim. You need to -- and with that, that
8 gives us an indication that you really haven't
9 taken -- you're minimizing your involvement in
10 the crime by not knowing exactly what happened
11 to the victim. You need to get that out. We
12 -- as I said, we talked about it for quite some
13 time because we just feel that you're not --
14 it's -- you're just taking responsibility for
15 the crime is superficial, and we need to get
16 genuine remorse. So, the big thing is remorse
17 for the victim. We also feel that your gains
18 are recent, as illustrated by when we talked to
19 your earlier and the District Attorney even
20 brought this up and I went back and went over
21 the Appellate Decision as well as the sentencing
22 thing for -- you indicated initially that you
23 were not involved with the shooting. Then you
24 say you were when they told you about your
25 vehicle, and that's when you mentioned about the
26 gun. They found the gun within (indiscernible).

1 We note that you are doing extremely well
2 programming, but we just feel that you need to
3 have more time. You should be commended for
4 your program that you have been involved with,
5 your Vocational Dry Cleaning, your Air
6 Conditioner Refrigerator, AA and NA, and the
7 Impact and Anger Management courses that you are
8 working with right now. In a separate decision,
9 the hearing Panel thought it's not reasonable to
10 expect that parole will be granted in a hearing
11 in the following two years. Again, the crime
12 itself was just especially cruel and callous in
13 that you (indiscernible) on an individual who
14 was vulnerable. He didn't have a weapon; he's
15 walking down the street, and you and your
16 co-defendant shot him. And, we realize that you
17 only drive the vehicle, but the mere fact that
18 you were there with your lights off is a strong
19 indication that you knew what was going to take
20 place. The -- and the motive for the crime as
21 we talked about earlier, was very trivial in
22 that this was a gang retaliation. All
23 indications point to this was a gang
24 retaliation. Once you've become -- once you've
25 come to grips with what transpired, allow
26 yourself to not minimize the involvement of what
27 JESUS PLAZA H-12371 DECISION PAGE 4 05/01/06

1 think you'll be okay, because you're definitely
2 on the road to getting a date. But you've got
3 to take that remorse to the victim; you can't
4 generalize. You said I take full
5 responsibility. You got to take it from not the
6 family. You've got to take responsibility for
7 Patrick.

8 INMATE PLAZA: I understand.

9 PRESIDING COMMISSIONER BIGGERS: Mr.
10 Mejia?

11 DEPUTY COMMISSIONER MEJIA: No further
12 comments from me.

13 PRESIDING COMMISSIONER BIGGERS: Okay.
14 Good luck to you. That concludes the hearing.
15 The time is now ten minutes to --

16

17

18

19

20

21

22

23 PAROLE DENIED TWO YEARS

AUG 29 2006

24 THIS DECISION WILL BE FINAL ON: _____

25 YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT
26 DATE, THE DECISION IS MODIFIED.

27 JESUS PLAZA H-12371 DECISION PAGE 5 05/01/06

CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, RUBY M. DOUGHERTY, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total TWO in number and cover a total of pages numbered 1 - 93, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the INITIAL PAROLE CONSIDERATION HEARING for JESUS PLAZA, CDC NO. H-12371, on MAY 1, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated MAY 30, 2006, at Sacramento, California.


RUBY M. DOUGHERTY
TRANSCRIBER
PETERS SHORTHAND REPORTING

EXHIBIT B

LIFE PRISONER EVALUATION REPORT
INITIAL PAROLE CONSIDERATION HEARING
DECEMBER 2005 CALENDAR
ADDENDUM

PLAZA, JESUS

H12371

This addendum is being submitted as a correction to some inaccuracies that were found in the Board Report for Plaza's Initial Parole Consideration Hearing.

On Page 2 of the report under Aggravating Circumstances: it says use of weapon: Gun, 9mm. That information was taken from the POR pg. 2. In the Court Transcripts for the Court of Appeal of the State of California Second Appellate District Division Two Page 3, it states that a .38 revolver was found in a hollow space underneath the dashboard of the suspects. A ballistic test indicated that an expended bullet found at the scene on Loveland Street was fired from the gun that was recovered.

Under the Preconviction Factors: C. Personal Factors: The Board Report states that Plaza was born 2/7/65 to Caroline and Jessie Plaza. This should be corrected as follows: Plaza was born 3/7/65 to Caroline and Jesus Plaza. Plaza also said that his marriage took place on 5/12/84 and not 5/7/84.

Postconviction Factors: Should read as follows; Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/21/92, Plaza was transferred to Calipatria where his custody was reduced to Close B. While at Calipatria, he worked in the culinary, pre-voc. and Computer Programming. Plaza was again transferred to CSP-LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the drycleaning, voc electrical shop, and air cond. refrigerator and heating. On 12/16/97 he was transferred to Avenal where he was in Computer Programming. On 3/13/98 he was transferred to CTF Soledad North Facility where he was assigned to the yard crew 4/7/98 to 4/28/98, and then to PIA Textiles. On 12/31/98 Plaza went to CMC East as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification, Close B custody was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF Central Facility, Plaza has been assigned to wing porter, culinary, dental assistant and again culinary, where he remains assigned.

Inmate Copy

Sent to Inmate on 11/29/05

PLAZA

H12371

CTF-SOLEDAD

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
2006 CALENDAR

2

T. Verdesoto 11-16-05

T. Verdesoto Date

Correctional Counselor I

D. Carnazzo CCT 11-16-05

D. Carnazzo Date

Correctional Counselor II

I. Guerra FC(D) 11-16-05

I. Guerra Date

Facility Captain

D. S. Levorse C&PR 11-18-05

D. S. Levorse Date

Classification and Parole Representative

LIFE PRISONER EVALUATION REPORT
INITIAL PAROLE CONSIDERATION HEARING
DECEMBER 2005 CALENDAR

PLAZA, JESUS

H12371

I. COMMITMENT FACTORS:

- A. Life Crime: Murder 1st, (PC 187), Los Angeles County Case #VA004108.. Sentenced: 25 years to Life. Weapon: Gun. MEPD: 1/25/07. Received in CDC: October 9, 1991. Victim: Patrick Littlebull, age: unknown.

1. Summary of Crime: The defendant, Jesus Plaza, and another subject were seen driving a vehicle near the victim, Patrick Littlebull. A witness heard a series of shots and saw the victim Patrick collapse onto the floor. Officers arrived at the scene of a residential street in Bell Gardens and found Patrick lying on the floor in a puddle of blood. Paramedics arrived shortly after and pronounced him dead at the scene. Victim's autopsy indicated that his death resulted from a single gunshot wound to the right lateral side of his chest.

Several witnesses gave officers information about the suspects vehicle, and approximately 1 hour later, police saw the vehicle and detained the defendant along with a second suspect. Officers observed a .9mm casing on the floor board of the vehicle in front of the passenger. Both Plaza and his companion were arrested and later evaluated for evidence of gunshot residue. (Source: POR pg 2, 3 &4).

2. Prisoner's Version: First and foremost to each family member and friend of Mr. Littlebull. Knowing that there are no special, no specific, nor any amount of words that could right the wrong I did. Nor can any words equal or be greater than the crime in a good way, I wholeheartedly apologize yet due to multiple counseling programs and self help programs that I have seeked out throughout my incarceration. I've gained knowledge and an understanding of my crime and true remorse, and so I take full responsibility for my choices and actions in the commitment of this crime and also stipulate to the P.O.R. as being true and accurate.

3. Aggravating/Mitigating Circumstances:

- a. Aggravating Factors:

PLAZA, JESUS

H12371

CTF-SOLEDAD

DEC/2005

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LIFE PRISONER EVALUATION REPORT
 PAROLE CONSIDERATION HEARING
 DECEMBER 2005 CALENDAR

2

- ❖ Victim was particularly vulnerable.
- ❖ Prisoner had opportunity to cease but continued with crime.
- ❖ Murder was senseless and served no purpose in completing the crime.
- ❖ Use of weapon: Gun, .9mm.
- ❖ Nature of crime exhibited viciousness, cruelty or callousness.

b. Mitigating Factors:

- ❖ Prisoner has minimal or no history of criminal behavior.

B. Multiple Crime(s): N/A.

1. Summary of Crime: NA.
2. Prisoner's Version: NA

II. PRECONVICTION FACTORS:

A. Juvenile Record: None noted in Central File.

B. Adult Convictions and Arrests:

- ❖ 07/16/83 PC 594 (a) Vandalism.
- ❖ 09/17/83 PC 187 Attempted Murder (no disposition).
- ❖ 04/02/84 PC 594 Malicious Mischief/Vandalism.

C. Personal Factors: Plaza was born 2/7/65 to Caroline and Jessie Plaza. He has four sisters and a brother. Plaza graduated from high school 5/17/83 from Vail High in Montebello, CA, and then married Guadalupe Falcon on 5/7/84 and they have three children, Ramona, and Justina, and Izaiah.

III. POSTCONVICTION FACTORS:

A. Special Programming/Accommodations: N/A.

B. Custody History: Plaza was received CDC on 10/9/91 at Wasco RC and was transferred to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/21/92 Plaza was transferred to Calipatria where his custody was reduced to Close B. While at Calipatria, he worked in the culinary and pre-voc. Plaza was again transferred to CSP LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the dry cleaning and voc electrical shop. On 12/16/97 he was transferred to Avenal, and on 3/13/98 he was transferred to

LIFE PRISONER EVALUATION REPORT
 PAROLE CONSIDERATION HEARING
 DECEMBER 2005 CALENDAR

3

CTF Soledad. While at CTF, Plaza was assigned to PIA Textiles. On 12/31/98 Plaza went to CMC-E as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification, Close B custody was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF, Plaza has been assigned as a porter, a dental assistant and has worked in the culinary.

- C. Therapy and Self-Help Activities: Since Plaza's incarceration, he has participated in Alcoholics Anonymous, Inmate Education Advisory Committee, Bible Study, the Impact Program, Narcotics Anonymous, served as a Deacon, and was a member of the Protestant Choir. Refer to Post Conviction Progress Reports for more details.
- D. Disciplinary History: Plaza has remained disciplinary free throughout his incarceration.
- E. Other: N/A.

IV. FUTURE PLANS:

- A. Residence: Plaza plans on living with his brother, Hector Plaza. Hector's address is 353 Carla Dr. Simi Valley, California 93063. His phone number is (805) 581-6323
- B. Employment: Plaza plans on working at Telair International 4175 Gardain Street, Simi Valley, CA 93063, phone #(805) 578-7303.
- C. Assessment: In review of Plaza's parole plans, this counselor does not foresee any problems, however, it is recommended that Plaza updates his support letters prior to his hearing.

V. USINS STATUS: NA.

VI. SUMMARY:

- A. Prior to release the prisoner could benefit from:
 - 1. Continuing to be disciplinary free.
 - 2. Participation in self-help and therapy programs.
 - 3. Upgrading vocationally and educationally.

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
DECEMBER 2005 CALENDAR

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- B. This report is based upon an interview with the prisoner on 9/1/05 lasting approximately 1 hour(s) and a complete review of the Central File lasting 3 hours(s).
- C. Per the Olson Decision, Plaza was afforded an opportunity to examine his Central File on 9/1/05, Plaza did examined his Central File. (Refer to CDC 128-B dated 9/1/05 in the General Chrono Section of the Central File.)
- D. No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan (ARP) for effective communication.

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
DECEMBER 2005 CALENDAR

5

T. Verdesoto 9-20-05

T. Verdesoto Date
Correctional Counselor I

J. Soares 9/21/05

J. Soares Date
Correctional Counselor II

A. Guerra 9/21/05

A. Guerra Date
Facility Captain

D. S. Levorse CCR 9-22-05

D. S. Levorse Date
Classification and Parole Representative

EXHIBIT C

1/M Ceyen

MENTAL HEALTH EVALUATION FOR
THE BOARD OF PRISON HEARINGS
May, 2006 Lifer Calendar

CORRECTIONAL TRAINING FACILITY SOLEDAD
APRIL, 2006

NAME: PLAZA, JESUS
CDC#: H-12371
DOB: 3/7/65
OFFENSE: PC 187 MURDER, FIRST DEGREE
DATE OF OFFENSE: 5/26/90
SENTENCE: 25 YEARS TO LIFE
EVALUATION DATE: 4/16/06
MEPD: 1/25/07

I. IDENTIFYING INFORMATION:

Mr. Jesus Plaza is a 41 year old, first term, Hispanic, married male from Los Angeles County. He is an active Christian. He has served 16 years on his sentence.

SOURCES OF INFORMATION:

This report is based upon a single 90 minute interview, plus review of the central and medical files.

II. DEVELOPMENTAL HISTORY:

When questioned about prenatal and perinatal issues, he stated that he was born at General Hospital, and his birth was normal. He progressed through developmental milestones in a normal manner. He is the second of four children. There is no history of cruelty to animals, enuresis or arson. He was never abused as a child, either sexually, physically or emotionally. He did have accidents as a child. One time he fell off of a pipe, injuring his leg on a fish tank. At the age of eleven he was involved in a car accident and injured his left knee which had recently been fixed through surgery.

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PAGE 2

III. EDUCATION:

He attended public school and graduated from Vail High School in Montebello. He was never suspended or expelled. He has continued his education by attending college classes. He is attending Coastline Junior College at this time by correspondence, working towards his AA degree. He has 15 more credits until he gets his AA degree.

IV. FAMILY HISTORY:

Mr. Plaza's biological parents separated when he was about four years of age. He was raised primarily by his mother and maternal grandparents. His mother is currently employed by St. Francis Hospital, and his father worked for years as a mechanic and an auto body repairman. He is now 66 years of age and has retired. He has one older sister that works for General Electric in Pennsylvania, a younger sister who is mainly retarded who lives with his mother, and one younger brother who is married and working as a sales manager of a container corporation. There is no family history of mental illness, of drug abuse, of alcoholism, or of legal problems.

V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:

Mr. Plaza is heterosexual. There is no history of high risk behavior or of problems.

VI. MARITAL HISTORY:

He has been married one time. He was married on 5/12/84 to Guadalupe who lives in Whittier. There are three children. Ramona, 21 years of age, is working as a R.N. at St. Francis Hospital. Justina is 19 and is attending Cerritos College. Isaiah is 10 years of age. His marriage is intact, and his wife is supportive. He indicated that he has a very close relationship with his wife and children. They keep in close contact by correspondence, phone calls and several visits a year.

VII. MILITARY HISTORY:

There is no military history.

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PAGE 3

VIII. EMPLOYMENT/INCOME HISTORY:

Right after he graduated from high school at the age of 18, he went to work for Century Plastics, where he worked for 4 ½ years. This company made fiberglass products for airplanes. He was the lead man there. In 1987, he went next door to work for Century Arrow doing the same kind of work. These two companies are owned by the same people. One year before the commitment offense, he began working for an asbestos abatement company as a laborer.

In the institution, he has obtained several trades. He has completed Vocational Dry Cleaning, Vocational Air Conditioning, Refrigeration and Heating, Vocational Meat Cutter, and he also has completed a correspondence course as a home inspector. Currently he is working as a meat cutter in culinary.

IX. SUBSTANCE ABUSE HISTORY:

Mr. Plaza stated that he did have an alcohol and drug problem from the ages of 15 to 25. He would drink alcohol primarily on weekends, because he had to work during the week. He smoked some marijuana. He also snorted cocaine about three times a week at the age of 16. At the age of 20, he began using cocaine every other day. He attends Alcoholics Anonymous and Narcotics Anonymous. He attends as often as he can, and he has been going steadily to these programs for the last 13 or 14 years.

X. PSYCHIATRIC AND MEDICAL HISTORY:

There is no psychiatric history. There is no history of serious hospitalizations, other than his surgery on his left knee. There is no history of serious accidents or of head injuries or seizures. His health is good.

XI. PLANS IF GRANTED RELEASE:

Mr. Plaza plans to return to his old employer in Simi Valley. He also will be able to live with his brother in that area. He will be compliant with all parole rules and regulations. He does have strong family support in the community. The prognosis for successful community living in this case is excellent.

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CLINICAL ASSESSMENT

XII. CURRENT MENTAL STATUS/TREATMENT NEEDS

Mr. Plaza related in a serious, sober, and cooperative manner. Mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. He does speak excellent English as well as Spanish. Affect was appropriate. There was no evidence of anxiety or depression. Eye contact was good. His memory was intact. His judgment was intact. His insight and self-awareness were good.

Mr. Plaza has spent a great deal of time in prison trying to improve himself. He currently is attending Coastline College, working on his Associate of Arts degree. His grades are very good. Also, he has obtained a certificate as a home inspector from a professional career development institute in Georgia by correspondence. In addition, he has completed several courses towards self-improvement. He has completed a Prison Fellowship Course in Parenting, Anger Management, another 12 week anger management class, Fathers Behind Bars Activity Group, Family Effectiveness Training and Harmony in the Home, Anger Management Course, Christian Basics Class, Teddy Bear Drive Benefiting Children in Crisis, a job success course, Communicable Diseases, Impact Program focusing on the victim's rights, Christian Living Course, Laubach Literacy Tutor Program, and the Salvation Army Bible Correspondence Course.

CURRENT DIAGNOSTIC IMPRESSION

- Axis I: Drug and alcohol use by history
- Axis II: No personality disorder
- Axis III: No physical disorder
- Axis IV: Life term incarceration
- Axis V: Current GAF: 95

XIII. REVIEW OF LIFE CRIME

Mr. Plaza discussed the details of the commitment offense. He accepts full responsibility for this offense. He feels very badly that the victim died. He is fully aware that the victim's family has suffered greatly at the loss of their father and husband. The fact that gunshots were fired was a total surprise to Mr. Plaza. He had no idea that this was going to happen, and there certainly was no intent on his part. He is very aware of the repercussions of this offense. Even today his wife, children and mother are being watched and approached about this situation

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by gang members. He is very concerned about their welfare. All of these situations are a result of the commitment offense. Needless to say Mr. Plaza feels deep feelings of sorrow, remorse and grief over this situation.

At the time of the commitment offense, Mr. Plaza had been using cocaine and alcohol. His judgment at that time was impaired by his use of these substances. At the time of the commitment offense he was actually under the influence. However, after 16 years there is no evidence of any involvement in drugs or in alcohol. He has continuously attended Alcoholics Anonymous and Narcotics Anonymous over the years. Since he has become Christian, he has strong values against the use of drugs or alcohol at this time in his life. He is certainly familiar with the destructive effects of this involvement. As a result, he has determined to never become involved in drugs or alcohol again in his life. This information is of historical importance only because it is not currently a diagnostic problem.

XIV. ASSESSMENT OF DANGEROUSNESS

A. In considering potential for dangerous behavior in the institution, Mr. Plaza has remained entirely disciplinary free. This is commendable. This is very difficult to do. At this time at this prison, we are having frequent racial riots. It is very difficult for a Hispanic male to disassociate himself from this activity, which can spontaneously occur in front of him, and if he doesn't get involved, he will receive retaliation. In this case, remaining disciplinary free is a very difficult and commendable achievement. There is no evidence that he has ever been involved in riots, possession of weapons, assaults on others, or threats of any kind. As a result, it is evident that his potential for dangerous behavior in comparison to other inmates is definitely below average.

Mr. Plaza has a chrono from Captain Guerra, in which it was stated that he had been hand picked to work as a communicator, working as a mediator between the two groups in the institution that had been involved in a riot against each other. Due to his ability to mediate between the groups and to get them to agree to non violence towards each other, the riot that occurred at that time was resolved peacefully, and the result was that the institution was able to unlock everybody and proceed with the program.

B. In considering potential for dangerous behavior in the community, Mr. Plaza has no prior arrests for violence before the commitment offense. He did receive an arrest as an adult in 1983 for spraying a one inch diameter dot on the wall. He has remained disciplinary free in the institution. In order to determine his risk level on parole, the Level of Service Inventory-

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Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, current adjustment, and other factors to determine current risk level. On this measure he obtained a score of 3.6 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 96 of them. This is a very low risk level. As a result, he poses no more threat to society than the average citizen in the community, and probably less threat to society at this point in his life.

- C. At the time of the offense, drugs and alcohol were a problem; however, at this point in his life this is no longer an issue. Therefore, there are no significant risk factors in this case.

XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS

There are no mental or emotional problems in this case that would interfere with routine parole planning. Mr. Plaza has obtained vocational training in several areas. He is currently working as a meat cutter in culinary. He has skills in vocational dry cleaning, as well as in vocational air conditioning, refrigeration and heating. He also has a job offer waiting for him upon his release. He has very strong family support in the community. All of these factors are good indicators of positive parole success. He has maintained his marriage, and his wife continues to be supportive and involved in his life. He maintains constant contact with his three children. Due to his study of the Bible and his commitment to the Christian way of life, he no longer has the irresponsible values and lifestyle that he did prior to the commitment offense. All of these factors indicate that his prognosis for successful adjustment in the community is excellent.

M. Macomber, Ph.D.

M. Macomber, Ph.D.
Correctional Psychologist
Correctional Training Facility, Soledad

S. B. ZIKA, Ph.D.

B. ZIKA, Ph.D.
Senior Psychologist
Correctional Training Facility, Soledad

D: 4/15/06
T: 4/19/06

EXHIBIT D

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: SEPTEMBER 6, 2007

Honorable: STEVEN R. VAN SICKLEN
NONEJudge JOSEPH M. PULIDO
Bailiff NONEDeputy Clerk
Reporter

(Parties and Counsel checked if present)

BH004502
In re,
JESSE PLAZA,
Petitioner,
On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

Nature of Proceedings: ORDER RE: WRIT OF HABEAS CORPUS

The Court has read and considered the Petition for Writ of Habeas Corpus filed on February 23, 2007 by the Petitioner. Having independently reviewed the record, giving deference to the broad discretion of the Board of Parole Hearings ("Board") in parole matters, the Court concludes that the record contains "some evidence" to support the determination that the Petitioner presents an unreasonable risk of danger to society and is, therefore, not suitable for release on parole. See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 667.

The Petitioner was received in the Department of Corrections on October 9, 1991 after a conviction for murder in the first degree with a firearm. He was sentenced to 25 years to life. His minimum parole eligibility date was January 25, 2007. The record reflects that on May 26, 1990, the Petitioner was driving with fellow gang members on a street known to be the territory of a rival gang. The Petitioner drove slowly, with the headlights turned off, as he approached the victim, a rival gang member, who was standing in front of a house. As the Petitioner drove by, his accomplice fired several shots at the victim. The victim was shot and killed. The Petitioner then sped away. A witness heard the gunshots and saw the Petitioner's car speed away called the police and the Petitioner and his accomplices were pulled over and arrested.

The Board found the Petitioner unsuitable for parole after his first parole consideration hearing held on August 29, 2006. The Petitioner was denied parole for two years. The Board concluded that the Petitioner was unsuitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety. The Board based its decision primarily upon his commitment offense.

The Court finds that there is some evidence to support the Board's finding that the Petitioner's offense was carried out in a calculated and dispassionate manner. Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(B). The Petitioner drove slowly with his headlights turned off, so as to avoid detection as he approached the victim. This demonstrates that the shooting was planned and that the Petitioner was deliberately driving toward the victim for that purpose. Additionally, the Petitioner's accomplice was armed with a gun for the purpose of shooting the victim. Regardless of whether the Petitioner himself shot the victim, he was acting in concert with his accomplice and, therefore, the shooting is imputed to him.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**DEPT 100**

Date: SEPTEMBER 6, 2007
 Honorable: STEVEN R. VAN SICKLEN
 NONE

Judge JOSEPH M. PULIDO
 Bailiff NONE

Deputy Clerk
 Reporter

(Parties and Counsel checked if present)

BH004502
 In re,
 JESSE PLAZA,
 Petitioner,
 On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

The Court also finds that there is some evidence to support the Board's finding that the Petitioner's motive was very trivial in relation to the offense. Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(B). The Petitioner and his accomplice shot the victim merely because he was a rival gang member. There is no evidence that the victim had threatened or harmed the Petitioner in any way. Gang rivalry is a very trivial motive for killing a man.

Additionally, the Court finds that the Board did not err in denying the Petitioner parole for a period of two years. The Board must articulate reasons that justify a postponement, but those reasons need not be completely different from those justifying the denial of parole. See *In re Jackson* (1985) 39 Cal.3d 464, 479. The Board indicated that the Petitioner was denied parole for two years because his commitment offense was calculated and dispassionate and against a particularly vulnerable victim; his motive was trivial; and he failed to show adequate remorse for the victim. These reasons were sufficient to justify a two-year denial.

Accordingly, the petition is denied.

The court order is signed and filed this date. The clerk is directed to give notice.

A true copy of this minute order is sent via U.S. Mail to the following parties:

Jesse Plaza
 H-12371
 Correctional Training Facility
 P.O. Box 689
 Soledad, California 93960-0689

Department of Justice- State of California
 Office of the Attorney General
 300 South Spring Street
 Los Angeles, California 90013

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012		CONFORMED COPY
PLAINTIFF/PETITIONER: JESSE PLAZA		SEP 07 2007
CLERK'S CERTIFICATE OF MAILING CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)		LOS ANGELES SUPERIOR COURT Joseph M. Pulido
		CASE NUMBER: BH004502

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- | | |
|--|--|
| <input type="checkbox"/> Order Extending Time | <input checked="" type="checkbox"/> Order re: Writ of Habeas Corpus |
| <input type="checkbox"/> Order to Show Cause | <input type="checkbox"/> Order |
| <input type="checkbox"/> Order for Informal Response | <input type="checkbox"/> Order re: |
| <input type="checkbox"/> Order for Supplemental Pleading | <input type="checkbox"/> Copy of Petition for Writ of Habeas Corpus for the Attorney General |

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

September 7, 2007
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By: Joseph M. Pulido, Clerk
Joseph M. Pulido

Jesse Plaza
H-12371
Correctional Training Facility
P.O. Box 689
Soledad, California 93960-0689

Department of Justice- State of California
Office of the Attorney General
300 South Spring Street
Los Angeles, California 90013

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JESSE PLAZA,

On Habeas Corpus.

B202665

(Super. Ct. No. VA004108)

ORDER

THE COURT:

The court has read and considered the petition for writ of habeas corpus filed October 9, 2007. The petition is summarily denied.

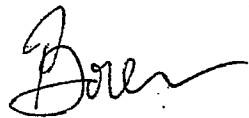
COURT OF APPEAL - SECOND DIST.

F I L E D

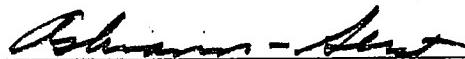
NOV 8 - 2007

JOSEPH A. LANE Clerk

J. GUZMAN Deputy Clerk



BOREN, P.J.



ASHMANN-GERST, J.



CHAVEZ, J.

CLERK'S OFFICE
Court of Appeal
SECOND APPELLATE DISTRICT
300 SOUTH SPRING STREET
SECOND FLOOR, NORTH TOWER
LOS ANGELES, CA 90013-1204

PRISONER RECEIVED THIS
LETTER ON DATE 11/13/07
St. M. Bennett



EXHIBIT F

Court of Appeal, Second Appellate District, Div. 2 - No. B202665
S158421

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re JESSE PLAZA on Habeas Corpus

The petition for review is denied.

**SUPREME COURT
FILED**

JAN 23 2008

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice